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**Custom, resistance and politics:
Local experiences of improvement in
early modern England**

by

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Volume 1:

Chapters 1 to 4

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In a thesis the appendices usually precede the bibliography. In this thesis many of the appendices are tables laid out in landscape format, rather than in portrait. It has, therefore, proved impossible to place the page numbers of those particular appendices in the same place on the page as they appear throughout the main body of the text, i.e. at the centre of the bottom of a portrait page. It was therefore decided to paginate the appendices independently and so the bibliography, which is paginated continuously with the thesis, precedes them.

Abstract

This thesis discusses popular participation in politics in early modern England and focuses on four inter-related themes that are central to our understanding of this subject: custom, improvement, public policy and resistance. These themes have been prominent in the recent historiographies either of public policy or of social relations in early modern England, but there has, as yet, been little attempt to relate these historiographies, and still less to study their central themes in the context of local experience. Full-scale case-studies of two series of enclosure riots that occurred during the 1640s, one in Duffield Frith (Derbyshire) and the other in Whittlesey (Cambridgeshire), examine closely both the micro-politics of the defence of custom within these communities and the implications of recent redefinitions of 'politics'.

Research was undertaken not only in national but also in local archives. Indeed the two series of riots were specifically selected because it was evident that sufficient local records had survived to permit reconstructions of the two economies upon which 'improvement' was imposed and of social relationships within the two communities. It has, moreover, been possible to recover details of various revenue-raising policies implemented by the early Stuart kings or their ministers that have previously been studied only briefly.

The discussion synthesises the contributions of those historians who have done so much in recent years to reinvigorate the historiography of rural social and political relations, and argues that the complex relationships between crown policy, local resistance and popular politics can best be reconstructed through the exploration of the micro-politics of custom. It also argues that participation in politics by ordinary people went much further than many recent historians have believed. Such participation was confined neither to local 'horizontal' politics, nor to 'vertical' politics in terms of petitioning parliament or waging law in the central courts, but even encompassed actively choosing to vote in parliamentary elections.

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Finally, thanks are to due to my family. To my husband, Denis, who has provided moral support throughout. To my daughters, Julia and Hannah, who have been proofreaders and have shown me some of the intricacies of Microsoft Excel and Access. Sadly my parents did not live to see my thesis completed, my mother having died just after I commenced my studies at Warwick and my father just before I completed them.

Abbreviations

<i>AHEW</i>	Joan Thirsk (ed.), <i>The Agrarian History of England and Wales</i>
BRO	Bedfordshire Record Office
<i>Commons' Journal</i>	<i>Journal of the House of Commons</i>
CLRO	Corporation of London Record Office (at the Guildhall)
CRO	Cambridgeshire Record Office (Cambridge branch)
<i>CSPD</i>	<i>Calendar of State Papers Domestic</i>
CUL	Cambridge University Library
<i>DAJ</i>	<i>Derbyshire Archaeological Journal</i>
DRO	Derbyshire Record Office
<i>Fenland Notes and Queries</i>	W. H. Bernard Saunders (ed. vol. 1), Rev W. D. Sweeting (ed. vols 2-7), <i>Fenland Notes and Queries, A Quarterly Antiquarian Journal for the Fenland, in the counties of Huntingdon, Cambridge, Lincoln, Northampton, Norfolk and Suffolk</i> (7 volumes, 1889-1909)
HALS	Hertfordshire Archives and Local Studies
HMC	Historical Manuscripts Commission
HLMP	House of Lords' Main Papers
HLRO	House of Lords' Record Office
<i>Lords' Journal</i>	<i>Journal of the House of Lords</i>
LRO	Lichfield Record Office (records of the diocese of Lichfield)
ODNB	<i>Oxford Dictionary of National Biography</i> (Oxford, 2004) (on-line version)
<i>OED</i>	<i>Oxford English Dictionary</i> (on-line version)
TNA: PRO	The National Archives (Kew): Public Record Office holdings
<i>VCH</i>	<i>The Victoria History of the Counties of England</i>
<i>VCH Cambs, 4</i>	R. B. Pugh (ed.), <i>VCH, A History of the County of Cambridge and the Isle of Ely</i> , volume 4, <i>Ely and the Isle of Ely</i> (London, 1953)
<i>VCH Derbys</i>	W. Page (ed.), <i>VCH, A History of the County of Derbyshire</i> (2 volumes, London, 1905-07)

Dates and monetary values

Where dates in original documents were given according to the old-style calendar, the year has been corrected to commence on 1 January rather than on 25 March.

Sums of money are given in £ s d. There were 12d in 1s; 20s in £1.

Chapter 1: In search of popular politics

In July 1653, following a lawsuit between certain leasehold and customary tenants of Haddenham in the Isle of Ely, Francis Taverner, one of the leaseholders, observed that many customary tenants had 'competent Estates', but 'wanting a full imployment in Tillage, they of antient custome make it a part of their Recreation to discourse of Law Cases'.¹ In this perceptive yet heavily loaded characterisation of customary culture, Taverner encapsulated several important issues that are central themes of this thesis.

Earlier in 1653, an action of trespass had been brought in the court of King's Bench against Thomas Dann, a customary tenant of Haddenham, who claimed right of common in local pastures called the Delffs and the Ose-Delffs.² The action was brought by one William Crisp, on behalf of himself and the other 'undertenants' who had leased those particular pastures from the lord of the manor. Crisp claimed that they each held their parcel in severalty, that they had sole rights of grazing in them and that the pastures were not, therefore, commonable by any of the customary tenants of the manor. Eventually the jury in King's Bench gave their verdict in favour of the leaseholders. In order to vindicate the jury's decision, Taverner took it upon himself to publish the evidence that had been advanced by both sides. In his discussion of the intricacies of the case, he noted that in their depositions, the customary tenants had sought to prove their right of common by means of various

¹ Francis Taverner, *A Vindication of the Jurie, Who upon the twelfth day of May 1653. gave their Verdict in the Upper-Bench at Westminster Against the Inhabitants of Hadenham, in the Isle of Elye, concerning Common, which they pretended to have in a Marsh called the Delffs, and Ose-Delffs in Hadenham aforesaid.* (London, 1653), p. 18. There is a copy of this pamphlet bound in a volume marked 'TRACTS' in the University of Cambridge Library (CUL: Bb*.11.50 (E).) This particular pamphlet is not listed in the *English Short Title Catalogue*, according to which the only surviving copy is held in the Gough Collection at the Bodleian Library, Oxford.

² The action is reported in great detail in Taverner, *Vindication of the Jurie*.

tortuous legal arguments. His observation quoted above is a direct comment on their active participation in that suit.

Taverner's jibe regarding the fenmens' lack of full employment chimed with the arguments of early modern improvement writers concerning the apparent idleness of forest and fen commoners.³ Moreover, he noted that although these inhabitants of Haddenham had time on their hands they also had 'competent Estates'. They were not merely subsisting in idleness but were making a profitable living, a state of affairs that was both alien and repugnant to improvers and governors alike. In suggesting that these men held such discussions habitually, moreover, Taverner drew attention to the customary nature of manorial life, a way of life that might be custom-driven rather than simply custom-bound.⁴ Furthermore, the suggestion that the commoners were known to discuss lawsuits as a 'recreation' implied that this pastime was born as much of interest as of necessity. It also implied that the community was neither insular nor isolated. Indeed, the fact that the actual suit regarding commoning in Haddenham had been heard in King's Bench, and that various inhabitants had travelled to London to give evidence, confirms that the highest courts in the realm were accessible to such people, commoners in both senses of the word. It also indicates clearly that they were prepared to go to considerable lengths, both literally and figuratively, to defend their perceived rights.

³ The fact that Taverner had leased a parcel of fen pasture in Haddenham does not *necessarily* mean that he supported agricultural improvement. In fact, it was revealed during the lawsuit that the Delffs and Ose-delffs had been separated from the 'Town commons' for over 300 years. (Taverner, *Vindication of the Jurie*, p. 7.)

⁴ Taverner was an acute, if condescending, observer of local customs and customary practices. He was lord of the manor of Hexton (Hertfordshire) and in 1625 he had made a written record of the 'strange kind of pastyme and jollities' that had been an integral part of the manor's Hocktide feast until the 1560s. The record is preserved in BL: Add MS 6223, ff. 11v-14r. That the same Francis Taverner was lord of the manor of Hexton and the writer of *Vindication of the Jurie* is confirmed by a brief discussion of a lawsuit concerning inhabitants of Harlington (Bedfordshire), which was situated 'within three miles of the place where I live'. (Taverner, *Vindication of the Jurie*, p. 62.)

As we shall see, the processes and attitudes observed by Taverner were not unique to Haddenham. His observations emphasise the inter-relationship of various themes – custom, improvement, public policy and resistance – which are central to the understanding of popular politics in seventeenth-century England. All of these themes have been very prominent in the recent historiographies either of public policy or of social relations in early modern England. But there has, as yet, been little attempt to integrate these two historiographies, and still less to study their central themes in the context of local experience. In introducing two full-scale case-studies of the defence of custom, the following discussion will creatively synthesise the contributions of those historians who have done so much in recent years to reinvigorate the historiography of rural social and political relations, and will argue that the complex relationships between crown policy, local resistance and popular politics can best be reconstructed through the exploration of the micro-politics of custom.

i. Custom

‘Custom’ is a multi-faceted concept and therefore has numerous definitions.⁵ The focus here is on custom in its particular legal sense: custom that governed the local organization of access to property in terms of land tenure and inheritance arrangements or of agricultural routines and the apportionment of common rights.⁶

In this context, custom was the articulation of the usages of any community, but

⁵ See, for example, the discussion of custom, culture and traditional usages in E. P. Thompson, *Customs in Common: Studies in Traditional Popular Culture* (London, 1991), Chapter 1, ‘Introduction: Custom and Culture’.

⁶ This thesis is not concerned with customs, in the sense of local traditions, such as the quasi-religious celebrations performed on May Day, the ritual treatment of anti-social conduct through rough music or the communal observances that marked local boundaries. For a discussion of a wide range of local practices covered by the term, but which does not distinguish between ‘traditions’ and ‘customary laws’, see C. Phythian-Adams, ‘Customs’, in D. Hey (ed.), *The Oxford Companion to Local and Family History* (Oxford, 1996), pp. 123-25.

usually those of a manor. Indeed, custom had no existence outside a community for, as Susan Reynolds has pointed out, 'It is the nature of custom that it presupposes a group or community within which it is practised'.⁷ Richard Gough, writing early in the eighteenth century, described it thus: 'Custome is a law or right, not written, which being established by long use and the consent of our ancestors, hath been and is dayly practised'.⁸ It was, therefore, the expression of communal practices, respected by most, though not invariably all, inhabitants and frequently contested by outsiders. Custom had the force of law in the manor: it was *lex loci*, that is, the law of the place.⁹ Indeed, Edward Thompson has called it the interface between law and common practice.¹⁰

Provided that it fulfilled three important criteria, custom was also accepted as legitimate by central courts.¹¹ Firstly, it had to be 'reasonable, and of benefit to the person(s) exercising the claim'. It also had to originate 'beyond the memory of man' (Gough: 'consent of our ancestors') – legally prior to 1189 but effectively within the memory of the oldest inhabitants. Thirdly, it had to be exercised continuously (Gough: 'hath been and is dayly practised'). In itself, therefore, custom was a source of definition, giving form to local practices; this form could, however, be highly flexible. In disputes with their landlord or with outsiders, tenants sought to justify their claims by reciting the relevant customs. On both sides of such disputes, there

⁷ S. Reynolds, *Kingdoms and Communities in Western Europe 900-1300* (Oxford, 1984), p. 21. This book is a comprehensive discussion of the origins of law, communities and custom, which, although concerned with an earlier period, is highly relevant.

⁸ Richard Gough, *The History of Myddle*, ed. David Hey, (Harmondsworth, 1981), p. 64.

⁹ This point is discussed at length in Thompson, *Customs in Common*, Chapter 3, 'Custom, Law and Common Right'.

¹⁰ Thompson, *Customs in Common*, p. 98.

¹¹ Andy Wood, 'Custom and the social organisation of writing in early modern England', *Transactions of the Royal Historical Society*, sixth series, 9 (1999), p. 259.

was scope for change over time, and even invention.¹² This flexibility meant that the articulation of custom was frequently a source of contention due to differing interpretations and recollections.

Local custom, which was passed down orally, originated in pre-literate society, where knowledge was preserved by and in living memory.¹³ The elders of a community were 'the repositories of local precedent and the custodians of communal memory'.¹⁴ However, since social memory was 'not a passive receptacle, but instead a process of active restructuring, in which elements may be retained, reordered, or suppressed', what was being remembered might transmute over time.¹⁵ Debates over the effects of literacy and writing on custom and oral culture have focussed on whether the codification of custom weakened the power of its oral articulation or whether it strengthened, or even jogged, local memory.¹⁶ In this context, it is important to remember that local custom could be not only transliterated in customals and other writings but also delineated and fixed in surveyors' maps.¹⁷

¹² Keith Wrightson, 'The politics of the parish in early modern England', in Paul Griffiths, Adam Fox and Steve Hindle (eds), *The Experience of Authority in Early Modern England* (Basingstoke, 1996), p. 23.

¹³ For a discussion of collective social memory as the repository of knowledge in pre-literate societies, see J. Fentress and C. Wickham, *Social Memory* (Oxford, 1992), Chapter 1, 'Remembering'. For a discussion of custom and literacy in early modern Britain, see Rab Houston, 'Custom in context: orality, literacy and power in early modern Scotland and England' (forthcoming).

¹⁴ Adam Fox, *Oral and Literate Culture in England 1500-1700* (Oxford, 2000), p. 261. Peter Large has observed that at Ombersley (Worcestershire) the homagers were 'the embodiment of the local customary heritage'. (Peter Large, 'Rural society and agricultural change: Ombersley 1580-1700', in J. Chartres and D. Hey (eds), *English Rural Society, 1500-1800: Essays in honour of Joan Thirsk* (Cambridge, 1990), p. 113.)

¹⁵ Fentress and Wickham, *Social Memory*, p. 40. The transmutation of memory over time might be intentional or accidental.

¹⁶ Recent discussions of these debates can be found in A. Fox, 'Custom, memory and the authority of writing', in Griffiths, Fox and Hindle, (eds), *The Experience of Authority*, pp. 89-116; A. Fox, *Oral and Literate Culture in England 1500-1700* (Oxford, 2000), especially Chapter 5, 'Local Custom, Memory, and Record'; D. Rollison, *The Local Origins of Modern Society: Gloucestershire 1500-1800* (London, 1992), pp. 12-15 and Chapter 3, 'Proverbial Culture'; Wood, 'Custom and the social organisation of writing'.

¹⁷ Following the production of a map, the boundaries of a manor were no longer drawn in the memory by remembered markers and local knowledge but on paper and parchment by measuring instruments and pens. (B. Klein, *Maps and the Writing of Space in Early Modern England and Ireland*, (Basingstoke, 2001), Chapter 2, 'Land Measuring: an Upstart Art'.) The effect of the work of surveyors in delineating boundaries is discussed in Chapter 4, part 2, section i, '1633: Commoners and enclosure boundaries'.

David Rollison has suggested that writing resulted in ‘the delegitimisation of the oral and aural cultures’ because writing was the tool of the ‘ruling classes’.¹⁸ Rather than being a prompt, literacy ‘dis-located memory’: that is, it ‘removed the junction between collective memory and local identity’ because writing located memory in a document, which could be archived anywhere, rather than in the remembrances of the local community.¹⁹ Adam Fox, on the other hand, has considered the role played by writing in the preservation and articulation of custom. Whilst charting the rise of literacy, he has been careful to demonstrate that there was ‘no simple or linear substitution of the one [memory] by the other [writing]’.²⁰

Indeed, in the past, many envisioned writing as an adjunct to memory. This is certainly the implication of a scribal formula used in twelfth-century Burgundy which observed that writing was ‘invented for the preservation of the memory of things ... [so that] things that we are unable to hold in our weak and fragile memories, are conserved by writing, and by the means of letters which last forever’.²¹ Another contemporary contribution to the literacy versus oral culture debate, which also contradicts Rollison’s argument that the two were incompatible, can be found in verses written in 1588 by Anthony Bradshaw of Duffield (Derbyshire).²² Bradshaw noted that:

¹⁸ Rollison, *Local Origins of Modern Society*, p. 13.

¹⁹ Rollison, *Local Origins of Modern Society*, p. 71. The definition of ‘dislocation’ is from Wood, ‘Custom and the social organisation of writing’, p. 259. There is a certain irony in bemoaning the loss of oral culture as a result of the advance of literacy when the only record of that oral culture is preserved in writing.

²⁰ Fox, ‘Custom, memory and the authority of writing’, p. 297.

²¹ J. Le Goff, *Historie et mémoire* (Paris, 1988), p. 140, quoted in Fentress and Wickham, *Social Memory*, p. 8.

²² Anthony Bradshaw (d.1614) was deputy steward of the royal forest of Duffield Frith in Derbyshire. As we shall see, he played a leading role in the preservation of custom there. (Chapter 2, section ix, ‘The preservation and transmission of custom’.)

The better sort of Duffeld men there Customes understandes
And how they do concerne them selves there houses & there lands
The poorer sort & ignorant wiche *custome books* have none
By song may learne some customes now & *memorie* alone.²³

According to Bradshaw, therefore, whilst the literate of Duffield had their customs set out in books, the illiterate relied on memory and mnemonics. There is no suggestion here that the customs themselves were different; he was simply observing that they were preserved by the two sorts of inhabitants in separate but complementary ways. This probably unique survival of a local example of harmony between oral and written custom demonstrates clearly how the two manifestations could co-exist within an early modern community. As Fox and Woolf have demonstrated, the spheres of oral and written culture were overlapping rather than ‘mutually exclusive and opposed processes for representing and communicating information’.²⁴ There were, however, some arenas in which oral and written culture did clash, the most significant conflict being that between custom and the law.

From the mid-sixteenth century onwards in many contexts and in many places the legitimacy and form of customs passed down by word of mouth began to be challenged. Perhaps the main reason for this was the increasingly active land market. Many of the incoming landlords were new to the locality, others were non-resident; few of them, therefore, either knew or understood *lex loci*. In such manors, the local laws and regulations which juries recalled might be transcribed as an *aide-memoire* for the new landlord. For instance, in 1582, having recently purchased the manor of Ivinghoe (Buckinghamshire), Anthony Mason of Kew (Surrey) drew up an

²³ Emphasis added. The original poem of fifty-four stanzas, entitled ‘A Friends Due Comendacion of Duffeld Frith’, is to be found in DRO: D2402 A/PZ 2/1. It was printed in full in *The Reliquary*, 33 (1883), pp. 69-74 and is reproduced in Appendix 1.

²⁴ Adam Fox and Daniel Woolf, ‘Introduction’, in Adam Fox and Daniel Woolf (eds), *The Spoken Word: Oral Culture and Britain, 1500-1850* (Manchester, 2002), p. 8.

agreement with the seventy-nine copyholders there, which set out in writing the customs of the manor 'for avoiding suppressing and preventing of all controversies ambiguities and doubts that hereafter might happen to be made or stirred for about the said Customs'.²⁵ It might be assumed that such agreements would only benefit the landlord, since the tenants' memory was now codified and could not be selective or transmuted. But if such charges as entry fines and heriots were fixed by these agreements, the landlord would be prevented from making arbitrary changes in future. At Ivinghoe, it was alleged that, prior to their codification, some of the manorial customs had 'tend[ed] to the prejudice of the said Lord' and others 'to the great oppression and injury of the Copyholders'.²⁶ As this agreement suggests, even in manors where customs were transliterated, it does not necessarily follow that the landlord thenceforth exercised unlimited authority over the wording of customals. These documents frequently resulted from negotiation, following an elaboration of the customs alleged to obtain.

The rendering of custom into writing in such circumstances was 'a formal, ideal statement of the balance of power at one given moment'.²⁷ Having examined many such documents, Fox has concluded that in 'attempting to transmute oral or ill-defined customs into written and codified documents, people of all sorts attempted to provide themselves with what they believed to be the best means of defending and advancing their rights and interests'.²⁸ Arguably this contradicts Rollison's suggestion that writing was a tool of the 'ruling classes'. It must be emphasised that local custom was not codified as a matter of course, and that, when it was codified, it

²⁵ HALS: D/Els B155, agreement between Anthony Mason, esquire, and John Duncombe *et al*, copyholders of Ivinghoe, 31 January 1582. Since Mason was from Kew he would, presumably, have had no prior knowledge of local customs in Ivinghoe.

²⁶ At Ivinghoe, the unwritten manorial customs were apparently very even-handed. This was not necessarily the case in most manors.

²⁷ Wood, 'Custom and the social organisation of writing', p. 265.

²⁸ Fox, 'Custom, memory and the authority of writing', p. 110.

was not necessarily recorded locally. The customs of many communities were only ever written down in the records of the central law courts and only then because inhabitants had been asked to describe their rights following a customary dispute.²⁹ Such depositions, made when customs were being attacked, may be the sole surviving source for them. This was indeed the case regarding the two communities studied here.

Since custom was shaped by pre-existing practices and given form by transmission from the past, many historians have described it as 'conservative'. Both Buchanan Sharp and Keith Lindley concluded that, by defending 'ancient customs', enclosure rioters were trying to restore the former *status quo*, rather than improve their lot or transform the social order, and aimed to preserve the existing fabric of local society from the onslaught of progress.³⁰ However, as John Walter has argued, 'there is a danger of conflating custom with conservatism'.³¹ Although those invoking custom were harking back to the traditions of the past, they did not necessarily mean, or want, to return to past circumstances: rather, they anticipated the consequences of proposed changes and concluded that they would not bring benefit to the majority of commoners, only to the encloser; to the new lessees, rather than those excluded from the disputed land; to those controlling the land allotted to the poor, rather than the poor themselves. Walter suggests, therefore, that whilst it is clear that 'there was what we might term a politics of nostalgia', historians should not confuse 'traditional' with 'conservative'.³² Defenders of custom sought to confer

²⁹ Wood, 'Custom and the social organisation of writing', p. 260.

³⁰ Buchanan Sharp, *In Contempt of All Authority: Rural Artisans And Riot In The West of England, 1586-1660* (London, 1980), p. 86; Keith Lindley, *Fenland Riots and the English Revolution* (London, 1982), p. 57.

³¹ J. Walter, *Understanding Popular Violence in the English Revolution: The Colchester Plunderers* (Cambridge, 1999), p. 4.

³² J. Walter, 'The English People and the English Revolution Revisited', *History Workshop Journal*, 61 (2006), p. 175.

on it the authority of the past in order to preserve the inheritance of their posterity.³³

Janus-like, they were simultaneously looking backwards and forwards.

As Fox has observed, common rights were ‘fashioned and elaborated in the exercise of everyday social relations, in the reciprocities between landlord and tenant which were constantly adapted and renegotiated over the centuries’. In this way subtle changes over time could ‘be accommodated without fear of contradiction from the records of past practice’.³⁴ Like custom in general, common rights differed with place. Their regulation and coverage should be put into context because variations arose due to local topography and geology, and the consequent agrarian practices.³⁵ Rights might include those of pasture (for cattle, sheep and horses), pannage (for pigs), turbary (peat), estovers (wood), piscary (fish) and common in the soil (sand, stone, gravel, etc).³⁶ Specific rights held in a particular manor might be recorded in a survey.³⁷ Once written, they lost the flexibility available to oral custom. Although common rights were rarely held legally by all inhabitants, frequently being limited to manorial tenants, local practice might allow virtual open access to common land, particularly common waste.³⁸ As we shall see, this will be a very prominent theme in the two case-studies considered here. Analysis of common rights claimed in various manors indicates their potential contribution to household economies, especially

³³ Andy Wood, *The Politics of Social Conflict: The Peak Country 1520-1770* (Cambridge, 1999), p. 325. For examples of deponents citing custom for the benefit of posterity, see Andy Wood, ‘The place of custom in plebeian political culture: England 1550-1800’, *Social History*, 22 (1997), pp. 52-53.

³⁴ Fox, ‘Custom, memory and the authority of writing’, p. 94.

³⁵ Thompson, *Customs in Common*, pp. 144-45.

³⁶ (Anon.), ‘Commons and wastes’ in Hey (ed.), *Oxford Companion*, pp. 104-05.

³⁷ For example, those for Berkhamsted (Hertfordshire) were recorded in surveys taken by Sir John Dodderidge in 1607 (HALS: 66937) and by John Norden and Edward Salter in 1616 (BL: Lansdowne MS 805, ff. 26-65). The surveys have both been published in (Editor unknown), *Two Surveys of the Manor of Berkhamstead[sic]* (London, 1868).

³⁸ Contributors to a recent volume on commons in north-west Europe demonstrate how much entitlement to access to commons varied from place to place. For example, in different regions commons might be open-access or rights might be conferred by residence or economic standing. (M. de Moor, L. Shaw-Taylor and P. Warde (eds), *The Management of Common Land in North West Europe, ca.1500-1850* (Turnhout, Belgium, 2002).)

those of the poor.³⁹ In addition to specified rights, common fields, pasture and wastes might offer further benefits such as berries, medicinal herbs, rushes and useful grasses.⁴⁰ Access to such uses of waste seems to have dictated the extent to which poor 'commoners' were wage-dependent: the greater the availability of waste, the more 'idle' commoners appeared to improvers.⁴¹

In his paper 'The Tragedy of the Commons', concerning the problems caused by unchecked population growth, the biologist Garrett Hardin expanded the work of a little-known nineteenth-century mathematician, William Lloyd, to illustrate how failure to regulate commons ultimately caused their destruction through overuse.⁴² Hardin's solution to the 'Tragedy' (defined in the context of classical Greek drama as 'the remorseless working of things') was 'to allocate [that is, restrict] the right to enter them'. His critique of common resources has been criticised for his assumption that commons were universally unregulated, open-access resources, rather than common property with limited access by specific persons. It has, nevertheless, been utilised as a legitimate economic model.⁴³ Hardin's solution should not be dismissed

³⁹ The value/usefulness of the various rights claimed at Berkhamsted are analysed in H. Falvey, "Most riotous, routous and unlawfull" behaviour: enclosure and unrest in Berkhamsted, Hertfordshire, 1618-1642' (unpublished Master of Studies dissertation, University of Cambridge, 1999), pp. 14-16.

⁴⁰ Two very full accounts of the benefits available from commons are provided by Neeson and by Woodward. (J. M. Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700-1820* (Cambridge, 1993), Chapter 6, 'The uses of waste'; D. Woodward, 'Straw, bracken and the Wicklow whale: the exploitation of natural resources in England since 1500', *Past & Present*, 159 (1998), especially pp. 48-56.) The rights and benefits available to commoners and inhabitants of Duffield and Whittlesey are analysed in detail in Chapter 2, sections viii and ix (Duffield) and in Chapter 3, sections ix and x (Whittlesey).

⁴¹ For a detailed discussion of commoners' apparent independence from wages and their perceived idleness, see Neeson, *Commoners*, Chapter 1, 'The question of value', especially 'Common right as income'. Although she is referring to commoners in the eighteenth and nineteenth centuries, her points are relevant to earlier periods.

⁴² Hardin's inaugural address as president of Pacific Division of the American Association for the Advancement of Science is published as G. Hardin, 'The Tragedy of the Commons', *Science*, 162 (December 1968), pp. 1243-48.

⁴³ Critics include contributors to B. J. McCay and J. M. Acheson (eds), *The Question of the Commons: The Culture and Ecology of Communal Resources* (Tucson, 1987). The model has been used in E. Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge, 1990). The various contributors to de Moor, Shaw-Taylor and Warde (eds), *The Management of*

by historians. On the contrary, it is in key respects a modern, scientific articulation of the views of those early modern village élites who wanted to regulate access to commons by poor inhabitants who lacked legal entitlement.

ii. Improvement and enclosure

By its very nature, custom was rooted in the past, regardless of whether its defenders were themselves conservative; improvement, by contrast, was a progressive concept. Tracing the etymological development of the verb ‘improve’, Andrew McRae has demonstrated how its meaning came to be associated explicitly with financial gain.⁴⁴ ‘To turn land to profit; to inclose [*sic*] and cultivate (waste land); hence to make land more valuable or better by such means’ became part of the language of the landowner and his tenant farmers, that is, those who could profit from the establishment of new practices and reorganised fields.⁴⁵ The moral economy, the popular consensus as to what constituted legitimate practices, was directly challenged by improvement, for those accustomed to access to traditional use-rights now found themselves, often physically, barred from them.⁴⁶

The main impetus for agricultural change in the late sixteenth and early seventeenth centuries was the rising population, from about 2.98 million in 1561 to 4 million by 1601 to 5.23 million in 1651.⁴⁷ New agricultural methods employed during the period increased output, being literally fruitful, but the means by which

Common Land borrow Hardin’s phrase and demonstrate that some European commons were indeed open-access.

⁴⁴ Andrew McRae, *God Speed the Plough: The Representation of Agrarian England, 1500-1660* (Cambridge, 1996), pp. 136-37.

⁴⁵ The definition of ‘improve’ is from the *OED*.

⁴⁶ Thompson, *Customs in Common*, Chapter 4, ‘The Moral Economy of the English Crowd in the Eighteenth Century’.

⁴⁷ E. A. Wrigley and R. S. Schofield, *The Population History of England 1541-1871: A Reconstruction* (Cambridge, 1981), pp. 208-09. For a discussion of economic expansion during this period, see, for example, K. Wrightson, *Earthly Necessities: Economic Lives in Early Modern Britain* (New Haven & London, 2000), Chapter 7.

these methods were brought to fruition were not beneficial to all. Some of the earlier husbandry manuals, such as Thomas Tusser's *Five Hundred Points of Good Husbandry* (first published in 1573), were mainly concerned with the improvement of the smallholder's farming methods.⁴⁸ The rise of surveying, and consequent concerns with private property, however, induced landowners with an eye to profit to alter local land patterns.⁴⁹ Surveyors, effectively self-employed consultants, not only delineated a particular manor's land in map form, but also enquired into the size and legal status of landholdings so that the landlord might 'know his own'.⁵⁰ The resultant surveys highlighted anomalies and so might encourage him to make improvements. Essentially, surveyors imparted an outsider's view. Local jurors' statements of common rights and customs recorded at manorial courts of survey might, on occasion, restrain the surveyor; more often, however, surveyors' recommendations disregarded the uses currently made of unimproved land.⁵¹ The language of improvement, employed by both surveyors and writers, brought new meanings to familiar words and encouraged the abandonment of traditional methods of husbandry. Indeed, as McRae points out, Gervase Markham, in suggesting as unskilled employees for farmers 'some Boyes and Girles, or other waste persons'

⁴⁸ McRae, *God Speed the Plough*, pp. 146-51. An earlier edition of Tusser's work appeared in 1557 as *A hundreth good pointes of husbandrie*.

⁴⁹ Surveying as a profession emerged in the mid-sixteenth century but came into its own in the early seventeenth century when the crown undertook to have its estates surveyed. (McRae, *God Speed the Plough*, p. 175) For a detailed discussion of the work involved when a surveyor laid out a forest enclosure, see the Duffield case-study: Chapter 4, part 2, section i, '1633: Commoners and enclosure boundaries'.

⁵⁰ McRae, *God Speed the Plough*, Chapter 6: '“To know one's own”: the discourse of the estate surveyor'. The representation of landed private property in early modern England has been discussed by Jacques Beauroy in 'La représentation de la propriété privée de la terre: *land surveyors* et *estate maps* en Angleterre de 1570 à 1660', unpublished paper given at the Colloque Terriers et Plans-Terriers, Paris, 23 September 1998. Beauroy remarked that the usefulness of estate maps was quickly recognised by landlords regarding the purchase of land, enclosure and drainage projects. (I am grateful to Dr Beauroy for providing me with the text of his paper.)

⁵¹ For tenants' statements, see, for example, *Two Surveys of the Manor of Berkhamstead*, pp. 74, 192.

transformed 'the poor from a problem of charity into an unexploited "productive resource" within an expanding commonwealth'.⁵²

Improvement could take various forms, some of which, such as changed crop rotations, the introduction of new crops or the engrossing of strips in the common fields, benefited the practitioners without adversely affecting fellow inhabitants.⁵³ Enclosure, on the other hand, could have a detrimental effect on a large proportion of the community. The enclosure of former common land, whether fields, pasture, woodland or waste, entailed the usurpation of custom. 'To enclose land was to extinguish common rights over it', for enclosure of common 'signified the appropriation to one person of land which had previously been at the disposal of the whole community throughout the year'.⁵⁴ An enclosure could be made for one of several purposes and could be brought about in a number of ways.⁵⁵ In earlier centuries most enclosures involved the conversion of arable land to pasture; however, by the seventeenth century many improvements were made to bring land into private cultivation, whether by the landlord or lessees.⁵⁶ Landlords might also enclose land to create a new park or enlarge an old one.⁵⁷ Some enclosures,

⁵² McRae, *God Speed the Plough*, p. 168, quoting Markham, *The English husbandman. The first part* (1613), sig. D4^b.

⁵³ For descriptions of many agricultural improvements that took place in the sixteenth and seventeenth centuries, see E. Kerridge, *The Agricultural Revolution* (London, 1967), *passim*. Later historians have queried the pace but not the extent of the changes outlined by Kerridge. New agricultural methods are summarised in McRae, *God Speed the Plough*, Chapter 5, 'Husbandry manuals and agrarian improvement'. Thirsk has considered books on agricultural improvement and new crops mostly written by and for gentlemen farmers. (J. Thirsk, 'Plough and Pen: Agricultural Writers in the Seventeenth Century' in T. H. Aston, P. R. Cross, C. Dyer and J. Thirsk (eds), *Social Relations and Ideas: Essays in Honour of R. H. Hilton* (Cambridge, 1983), pp. 295-318.)

⁵⁴ J. Thirsk, 'Enclosing and engrossing' in J. Thirsk (ed.), *AHEW*, 4, 1500-1640 (Cambridge, 1967), p. 201.

⁵⁵ E. Kerridge, *Agrarian Problems in the Sixteenth Century and After* (London, 1969), Chapter 4, 'Enclosure'.

⁵⁶ This was the case at Berkhamsted in 1639. (HALS: AH 2785, Extracts from Duchy [of Cornwall's] Office Book, p. 28, 13 February 1639, *verbatim* from Commissioners of the [Prince's] Revenue Book (1633-39), 10, f. 204; AH 2785, p. 34, *verbatim* from the Council [of the Duchy's] Book of Orders (1635 onwards), f. 140.)

⁵⁷ The earlier enclosure at Berkhamsted in 1619 increased the size of the royal park there because Prince Charles desired 'the increase of deare so as the same may be a solace and comfort both to [his]

especially on royal manors, were made to increase revenue from the land in question. Large open tracts of underused land such as forests and fens were prime targets for improvement; hence the proposed disafforestation and enclosure of the royal forest of Duffield Frith and the drainage and subsequent enclosure of the fens at Whittlesey.⁵⁸

Some enclosures were carried out arbitrarily, by the lord of the manor or individual tenants; some were established by agreement; some by due process of law. Historians have debated whether enclosures by agreement actually were agreements or were the result of coercion by one of the parties.⁵⁹ Such 'agreements' could be confirmed by a simple indenture and conveyances, but many were ratified in law.⁶⁰ The benefits of enclosure might be widespread: tenants' landholdings consolidated; landlords' revenues increased by higher rents from improved land; waste brought into cultivation or pastoral use, if only for part of the year as in the fens; former 'idle' poor commoners employed by prospering tenant-farmers and landlords who, in the absence of major technological change, needed an increased workforce.⁶¹ One anonymous commentator, writing during the reign of Charles I, even argued that enclosure of the forests was in the best interest of the poor since they would have 'a portion secured then to inclose about their cottages to raise herbs and roots, keep a

Maiestie and himself'. (TNA: PRO: STAC8/32/16, document 6, information presented by Sir Thomas Coventry, October 1620.)

⁵⁸ TNA: PRO: DL44/1117, commission to negotiate agreement with the tenants 'for the settinge out of a Convenient proporcion [of] the said Duffield Fryth to be inclosed and improved for our use and benefitt', 12 July 1632; TNA: PRO: E125/24, p. 314, ff. 1r-26r, order for the division of the fens around Whittlesey, January 1639.

⁵⁹ M. Beresford, 'Habitation versus Improvement: the debate on enclosure by agreement', in F. J. Fisher (ed.), *Essays in the Economic and Social History of Tudor and Stuart England, in Honour of R. H. Tawney* (Cambridge, reprinted 1974), pp. 58-59; Kerridge, *Agrarian Problems*, p. 114. For case-studies where enclosure 'by agreement' was followed by a riot see H. Falvey, 'Crown Policy and Local Economic Context in the Berkhamsted common Enclosure dispute, 1618-42', *Rural History*, 12 (2001), pp. 123-58; Steve Hindle, 'Persuasion and Protest in the Caddington Common Enclosure Dispute, 1635-39', *Past & Present*, 158 (1998), pp. 37-78; S. Hipkin, '"Sitting on his Penny Rent": Conflict and Right of Common in Faversham Blean, 1595-1610', *Rural History*, 11 (2000), pp. 1-35.

⁶⁰ Kerridge, *Agrarian Problems*, p. 112

⁶¹ Wrightson, *Earthly Necessities*, pp. 163-64, 200.

cow and sow some corn for their better relief'.⁶² And yet objections were frequently raised when improvement was suggested: neither the growing numbers of labouring poor nor the moral and customary issues could be satisfied by economic argument.

iii. Public policy

During periods of slow population growth, enclosing and engrossing had little detrimental effect; however, during the sixteenth century such activities caused concern in government circles because the rising population consequently included an increasing number of landless labourers, who were badly affected both by reduction in accessible common land and the escalating cost of living. Some forms of enclosure were illegal, but all forms came under close scrutiny.⁶³ Several commissions of enquiry were established and acts of parliament passed encouraging the maintenance of tillage and limiting or condemning certain types of enclosure, particularly those that resulted in depopulation; but legislation tended to be localised and the crown's enforcement was weak as it depended mainly on the zeal of private informers. By the end of the sixteenth century, however, attitudes had changed such that 'the idea that enclosure had some merit was gaining ground, as reasonable methods of carrying it through became more common and the peasantry shared in its benefits'.⁶⁴

A series of good harvests in the early 1590s persuaded parliament to repeal the tillage laws in 1593; however the timing was unfortunate because the disastrous

⁶² Anon., 'An Account of the benefits which would arise from the inclosing, and improving the Forests, Parks, and Chaces belonging to the Crown, not only to the publick in general, but to the respective claimants interested therein, as the same were set forth, and explained by the Ministers and Officers of his late Majesty King James the 1st, in their many attempts made to inclose the same', published as Appendix III in J. St John, *Observations on the Land Revenue* (London, 1787). The quotation is from p. 10 of the appendices, which are paginated separately from the text of the book.

⁶³ Unless noted otherwise, the following discussion of enclosure legislation is based on Thirsk, 'Enclosing and engrossing' and Beresford, 'Habitation versus improvement'.

⁶⁴ Thirsk, 'Enclosing and engrossing', p. 227.

harvest failure in autumn 1594 was the first of a series of four. In 1597, because of these bad harvests and the continuing opposition to enclosing and engrossing from the populace, parliament decided to re-enact the statutes against them. These statutes remained important whilst high prices lasted but in 1601 the Commons began considering the possibility of repealing them since the previous harvest had been good, and grain prices had fallen. The parliamentary debates illustrate the differences between conservative and liberal thinkers.⁶⁵ Despite many arguments in favour of repeal, Robert Cecil's counter-argument, representing the government's current position, prevailed. The tenor of the debates of 1597 and 1601, however, 'suggests that the weight of opinion in the house was gradually shifting towards a *laissez-faire* attitude, leaving "every man free" as Walter Raleigh phrased it'.⁶⁶

In 1607, the Midland Revolt against enclosures dramatically affected the attitude of those in power.⁶⁷ The disturbances lasted more than a month and the alarm they caused prompted the government to appoint, in August 1607, an enclosure commission to seek out and punish enclosers.⁶⁸ The evils of enclosure as perceived by the rebels did need to be addressed but certain arguments in favour of enclosure also required accommodation.⁶⁹ A memorandum, dated 5 July 1607, apparently prepared for the Privy Council immediately after the revolt, claimed that 'By redressing the fault of Depopulation and Leaveing enclosing and convertinge arbitrable as in other shires the poore man shalbe satisfied in his ende; Habitation;

⁶⁵ The various debates are succinctly summarised by McRae, *God Speed the Plough*, pp. 7-12

⁶⁶ Thirsk, 'Enclosing and engrossing', p. 232

⁶⁷ For details see Edwin F. Gay, 'The Midland Revolt and the Inquisitions of Depopulation of 1607', *Transactions of the Royal Historical Society*, new series, 18 (1905), pp. 195-244; John E. Martin, *Feudalism to Capitalism: Peasant and Landlord in English Agrarian Development* (London, 1983), pp. 159-215; and Roger B. Manning, *Village Revolts: Social Protest and Popular Disturbances in England 1509-1640* (Oxford, 1988), pp. 229-46.

⁶⁸ Thirsk, 'Enclosing and engrossing', pp. 235-36.

⁶⁹ Beresford, 'Habitation versus improvement', p. 43.

and the gentleman not Hindered in his desier; Improvement'.⁷⁰ Thus official policy was turning towards the idea of repealing the tillage acts, or at least permitting enclosure to proceed unhindered.

Joan Thirsk has noted that, despite caution during the early years of James's reign regarding the improvement of wastes and commons, 'a new spirit crept in, somewhere around 1617, and ... we can actually watch James's [policy] deteriorate'.⁷¹ In February 1618, commissioners were appointed to grant exemptions from the tillage acts and their commission demonstrates how James and his advisors then viewed enclosure.⁷² It acknowledged that some land was not suited to arable farming; indeed the conversion of some woodlands and wastes to pasture had benefited the commonwealth. As corn and grain were plentiful again and prices were stable, there was less reason to encourage tillage; the fattening of animals was also necessary for the feeding of the nation. Consequently, it appeared that the statutes against the conversion of arable to pasture were hindering many and were benefiting neither crown nor commonwealth. Pardons would be granted to enclosers provided that the laws against depopulation had not been breached by their activities; in some cases, however, pardons would not be offered by the commissioners. Pardons would not be granted for enclosures that excluded any person from 'their right or lawfull use of Common in any such landes ... converted into pasture as aforesaid.' This was particularly restrictive since many projected enclosures concerned common land, whether arable, waste or wood.⁷³

⁷⁰ (Anon.), *A Consideration of the cause in question before the lords touching depopulation*, reprinted in J. Thirsk and J. P. Cooper (eds), *Seventeenth Century Economic Documents* (Oxford, 1972) pp. 107-08.

⁷¹ J. Thirsk, 'The Crown as projector on its own estates, from Elizabeth I to Charles I', in R. W. Hoyle (ed.), *Estates of the English Crown 1558-1640* (Cambridge, 1992), p. 319.

⁷² TNA: PRO: C66/2134/1d, enclosure commission, February 1618.

⁷³ Other exclusions included the fact that pardons were retrospective only, and so would not apply to lands converted in the future; nor would they apply to 'any landes Within any our Honours lordshipps or Mannors being in the Handes or possession of us our heires or Successors'.

The willingness of the crown to propose a large number of projects for improving wastes on many of its manors, despite the remit of the commission, demonstrates inconsistencies in crown policy that became all too conspicuous during the latter part of James's reign.⁷⁴ Despite paternal concern for the well-being of the commonwealth, there was also a desire to harvest the fiscal yield of economic change. Projects and improvements would benefit both crown and people – it was alleged. In a letter, dated 20 August 1618, regarding the enclosure of King's Sedgemoor (Somerset), James assured the commissioners that 'the improvement and enclosure of it ought greatly to tend to the good of our commonwealth, the relief and right of the borderers and lawful commoners thereof ... and the just increase of the revenue of our Crown'.⁷⁵ Thirsk has suggested that the crown, urged on by its surveyors, actually led the way by its efforts to enclose commons and that this programme of reforming the management of its estates in the 1610s caused alarm in government circles, as it might have triggered repetitions of the Midland Revolt.⁷⁶ Thus the crown was effectively encouraging a more lenient attitude towards enclosure: 'the force of royal example at this period has to be emphasised, for its weight is not often recognised'.⁷⁷ Thirsk has also shown that, although a landlord, the crown was *de facto* above the law. The enforcement of the tillage acts depended on informers but, while other enclosing landowners might be pursued by informers who denounced them publicly, the crown was not hampered in this way.⁷⁸ The commission of 1618, therefore, sought to provide these other landowners the same opportunity as the crown.

⁷⁴ Thirsk, 'The Crown as projector', p. 319.

⁷⁵ Dorset Record Office, D.124, box 18, copy signet letter, 20 August 1618, quoted in R. W. Hoyle, 'Disafforestation and drainage: the Crown as entrepreneur?', in Hoyle (ed.), *Estates of the English Crown*, p. 378.

⁷⁶ J. Thirsk, 'Changing Attitudes to Enclosure in the Seventeenth Century', in *The Festschrift for Professor Ju-Hwan Oh on the Occasion of His Sixtieth Birthday*, (Taegu, Japan, 1991), p. 520.

⁷⁷ Thirsk, 'Changing Attitudes', p. 522.

⁷⁸ Thirsk, 'Changing Attitudes', pp. 522-23.

The concern of some members of parliament about the poor, who were badly affected by the enclosure or misappropriation of commons, is demonstrated in the text of a bill, dated 7 March 1621, 'for the improving and better ordering of Commons, interCommons and wast groundes for the good of the poore Commoners and all interested therein'. Their concern was not, however, shared sufficiently widely for the bill to become law.⁷⁹ Indeed, enclosure had become so acceptable in parliament that in 1624 the tillage statute of 1563 was repealed and those of 1597 'died for want of enforcement'.⁸⁰

By the end of the 1620s, widespread distress caused by bad harvests and high prices had transformed public policy. There were numerous complaints concerning the poverty caused by depopulating enclosure, especially in the Midlands and the south-west.⁸¹ Although some landlords maintained that there was a distinction between 'improving' and 'depopulating' enclosure, the Privy Council deduced that 'in conclusion all [enclosures] turn to depopulation'.⁸² Consequently three commissions for depopulation were issued during the 1630s. The first, issued in 1632, required commissioners 'to inquire towching depopulations, and the conversion of Arable lands to pasture' since 1567 but it was limited to only six counties.⁸³ The second, issued in May 1635, was more far-reaching. Commissioners

⁷⁹ The text of this bill has been transcribed from a manuscript in the records of the House of Lords in W. Notestein, F. H. Relf and H. Simpson, (eds), *Commons Debates 1621* (New Haven, 1935), 7, pp. 112-19. The first reading of the bill took place on 7 March 1621; the second reading took place on 7 May but it did not pass that stage. (*Commons' Journal*, 1, pp. 542, 611.) It is possible that this bill was partly the work of Francis Bacon, who had prepared 'some commonwealth bills' for the parliament of 1621. (For Bacon's abortive bills, see Paul Slack, *From Reformation to Improvement: Public Welfare in Early Modern England (The Ford Lectures delivered to the University of Oxford 1944-1995)* (Oxford, 1999), p. 59 and references at n. 23.)

⁸⁰ Thirsk, 'Enclosing and engrossing', p. 236.

⁸¹ Thirsk, 'Changing Attitudes', pp. 525-26.

⁸² Hindle, 'Persuasion and protest', p. 73, quoting TNA: PRO: PC2/40, f. 385, Privy Council to the High Sheriffs of Leicester and Nottingham, 7 March 1631.

⁸³ TNA: PRO: SP16/229/112. The six counties were Lincolnshire, Leicestershire, Northamptonshire, Somerset, Wiltshire and Gloucestershire. Justification for the dating is presented in E. M. Leonard, 'The inclosure of common fields in the seventeenth century', *Transactions of the Royal Historical Society*, new series, 19 (1905), p. 129.

were to enquire into the conversion of arable to pasture, and its consequent devastation both in terms of wasted land and depopulation, wherever it had occurred in the realm since 1588.⁸⁴ When this commission was reissued in March 1636, the limiting year was changed to 1568.⁸⁵ Paternalistic in tone, the commissions lamented the 'manifest oppression and destruction wrought on our people'. Moreover, since the first-named commissioner was Archbishop Laud, 'a great hater of depopulation in any kind, as being one of the greatest mischiefs in this kingdom', depopulators were likely to be sought out zealously.⁸⁶

The prosecution of depopulators in Star Chamber may be viewed either as paternalistic action taken by the crown against disturbers of the commonwealth, or, as a fiscal expedient, since offenders were fined heavily.⁸⁷ On balance the latter seems more likely because, as Rushworth observed, by virtue of 'the terror of the Fine imposed in the Star-Chamber on Sir Anthony Roper for committing Depopulations, there was brought in to the Exchequer £30,000 and upwards'.⁸⁸ Owing to the threat of fines, many landlords were less keen to enclose than previously; however, since those fined were not required to dismantle their enclosures, the commissions were not as effective as they might have been. Samuel Gardiner observed that 'It looked as if there was more thought taken for the money to

⁸⁴ TNA: PRO: C66/2688/31d, 8 May 1635, part 5.

⁸⁵ TNA: PRO: C66/2706/3d, 23 March 1636, part 23.

⁸⁶ Laud's views are stated in a letter from Laud to Gilbert Sheldon, Warden of All Souls, dated 2 March 1638, quoted in Hindle, 'Persuasion and Protest', p. 73. In June 1635, royal policy was clearly expressed by Sir Thomas Coventry, Lord Keeper of the Great Seal, in his charge to judges: 'Depopulation is an oppression of a high nature, and commonly done by the greatest Persons, that keep the Juries under and in awe; ... yet His Majesty willeth, that you do not cease, but inquire on still: for it is His Resolution, against all opposition to make all men see, that he hath a care of this over-spreading evil, ... [carried out] to satisfie the greedy desires of a few, who do waste as profusely, as they do gather unconscionably.' (J. Rushworth, *Historical Collections*, part 2, 1, 1629-1639 (London, 1680), p. 295.)

⁸⁷ Steve Hindle, *The State and Social Change* (Basingstoke, 2000), p. 75.

⁸⁸ Rushworth, *Historical Collections*, 1629-1639, p. 333.

be paid for condoning the evil than for the redress of the evil itself'.⁸⁹ Charles's agrarian policy was indeed 'smeared with the trail of finance'.⁹⁰ The king, moreover, pressed on regardless with his own projects to enclose fens and forests.

The crown's ambivalent attitude towards enclosure arose at least partly from fiscal considerations. The parlous state of the royal finances when James came to the throne dictated the large number of revenue-raising projects considered by his advisers. Some were undertaken, others were rejected as too inflammatory.⁹¹ The disafforestation or drainage and subsequent enclosure of crown lands were the most high profile projects, largely due to the vast acreages involved, but others, diverse in nature and success, were also attempted.⁹² Improvements and projects were frequently carried out by private individuals but those undertaken by, or on behalf of, the crown are much better represented in the archives. Both case-studies in this thesis consider the effects of enclosure carried out at the prompting of the crown. Duffield Frith belonged to the duchy of Lancaster and the drainage and subsequent enclosure of the Whittlesey fens was part of Charles's 'spectacular schemes for settlement in the Bedford Level'.⁹³ Sometimes, as at Duffield, the crown oversaw the work, with the intention of reaping an increased rental income; in other projects, as at Whittlesey, where undertakers bore the financial burden, the crown was, in

⁸⁹ S. R. Gardiner, *History of England from the Accession of James I to the Outbreak of the Civil War, 1603-1642*, 8, 1635-1639 (London, 1884), p. 77.

⁹⁰ R. H. Tawney, *The Agrarian Problem in the Sixteenth Century* (London, 1912), p. 391.

⁹¹ Various revenue-raising schemes, some of which were never implemented, are discussed in Thirsk, 'The Crown as projector' and projects to improve fens and forests are discussed in Hoyle, 'Disafforestation and drainage'. Some of the projects are discussed in detail in the Duffield case-study. (Chapter 4, part 1, 'Public policy – a testing ground for royal projects.)

⁹² Other projects included the exploitation of mineral resources; Walter Morrell's project for establishing the new draperies in various counties; the Cockayne project; and that of fishing 'busses' to confront Dutch mastery of trade. The best introduction to projects and projectors is J. Thirsk, *Economic policy and projects: the development of a consumer society in early modern England* (Oxford, 1978). For Walter Morrell, see M. Zell, 'Walter Morrell and the New Draperies Project, c.1603-1631', *Historical Journal*, 44 (2001), pp. 651-75. For fishing 'busses', see J. Cramsie, 'Commercial projects and the fiscal policy of James VI and I', *Historical Journal*, 43 (2000), pp. 345-64.

⁹³ Thirsk, 'The Crown as projector', p. 348.

effect, simply ‘licensing an alteration in land use which others could exploit at their own risk’.⁹⁴

During the first two decades of the seventeenth century there was a degree of idealism in the proposals for improvement, being couched in terms of the benefits that would accrue to the inhabitants in particular and to the ‘commonwealth’ in general, but as time went on such arguments were dropped. Indeed, from the mid 1620s onwards, demonstrating concern not for its poor subjects but for its poor treasury, the crown’s policy focussed on the improvement and enclosure of wastes as means to solve its financial problems.⁹⁵ Such projects were to prove notably ineffective as well as costly for they resulted in scant public good, and indeed, little private gain for the crown, its new tenants or the undertakers. They were also highly unpopular with dispossessed commoners.

iv. Resistance and riot

Resistance to enclosure took many forms. Arbitrary enclosure by a landlord might incite immediate protest, whereas enclosure by agreement was, in theory, supported by the majority of tenants. In practice, however, ‘agreements’ were only signed by those tenants holding the majority of land, and sometimes these men were few in number.⁹⁶ Those benefiting from changes in agricultural practice welcomed the ‘improvement’, others did not. Even so, although the adverse effects of change were (and are) frequently bemoaned, they were rarely forcibly attacked. John Walter has observed that early modern opponents of enclosure, constrained by a ‘culture of

⁹⁴ Hoyle, ‘Disafforestation and drainage’, p. 388.

⁹⁵ Hoyle, ‘Disafforestation and drainage’, p. 369.

⁹⁶ For a discussion of various types of enclosure and how they were brought about, see Kerridge, *Agrarian Problems*, Chapters 4 and 5.

obedience', saw riot as a last resort.⁹⁷ They sought to defuse potentially explosive situations by recourse to law and by appeals to a moral economy. The number of cross-suits brought in other courts by 'rioters' accused in Star Chamber bears testimony to protesters' attempts to use legal means to settle their grievances. The popular acculturation of law and of the crown's own paternalistic rhetoric led to expectations that the crown would offer protection from oppression and hence many protesters justified their actions by invoking royal authority.⁹⁸

Walter's recent focus on grumbling has pinpointed the seed from which resistance might grow.⁹⁹ Other than law-suits, there were various courses of action open to opponents of enclosure ranging from passive acceptance, through foot-dragging, refusal to sign an agreement (which might, or might not, scupper the proposal), to determined physical resistance.¹⁰⁰ Whatever form opposition ultimately took, it surely began in some communal place with mutterings against the attack on local custom perpetrated by the encloser.¹⁰¹ Allegations in Star Chamber of 'divers seacrett and unlawfull Conventicles' where concerted action was arranged, necessary rhetoric with which to press charges of unlawful combination, probably contained some grain of truth for organised, mass resistance did not occur unbidden.¹⁰² Some grumblers, moreover, were prepared 'to take the initial stride across the Rubicon of

⁹⁷ Walter, *Understanding Popular Violence*, p. 2.

⁹⁸ Walter, *Understanding Popular Violence*, p. 5.

⁹⁹ J. Walter, 'Public transcripts, popular agency and the politics of subsistence in early modern England', in M. J. Braddick and J. Walter (eds), *Negotiating Power in Early Modern Society: Order, Hierarchy and Subordination in Britain and Ireland* (Cambridge, 2001), pp. 123-48.

¹⁰⁰ Manning, *Village Revolts*, Chapter 5, 'Resistance to "Enclosure by Agreement" '.

¹⁰¹ Jeanette Neeson discusses grumbling as a form of resistance to (parliamentary) enclosure and the various forms that it could take. (Neeson, *Commoners*, Chapter 9: 'Resisting enclosure' *passim*, but especially p. 270)

¹⁰² Quotation from TNA: PRO: STAC 8/32/16, document 6. Similarly, although many protesters levied a common purse in order to finance their resistance, either through the courts or by physical opposition, the sheer number of informations accusing rioters of raising such levies suggests that this too was a strategy used frequently by lawyers to 'prove' conspiracy.

resentment' to open resistance.¹⁰³ Depending on the nature of that leadership, resistance in defence of custom could be a unifying force within that society; although self-interest might dictate non-participation.¹⁰⁴

In early modern England, riot occurred 'when three people gathered and broke the peace, or gathered with the intention of doing so'.¹⁰⁵ Andy Wood has pointed out that 'violence could be interpreted loosely, to embrace intimidating words spoken by people bearing offensive weapons'.¹⁰⁶ The definition of an offensive weapon was similarly flexible. For example, in complaints against enclosure rioters, it could encompass a spade carried with the intention of filling in enclosure ditches. Hence, although inter-personal violence was rare in enclosure riots, the law could still be interpreted harshly against participants. 'Rioters' themselves also knew how to manipulate the law and even acted to circumvent it. At Shepshed (Leicestershire), for example, the fences round the disputed enclosure were dismantled by commoners, mostly women, working in *pairs*.¹⁰⁷ At Nether Wyresdale (Lancashire) women were urged to protest for 'woemen were lawless and ... might boldly without anie Fear of punishment pull downe the hedges and ditches'.¹⁰⁸ Male rioters might dress in female clothing for the same reason.¹⁰⁹ Members of a rioting crowd 'strove to redress perceived community grievances ...

¹⁰³ J. Walter, 'A "Rising of the People"? The Oxfordshire Rising of 1596', *Past & Present*, 107 (1985), p. 119.

¹⁰⁴ Wrightson, 'The politics of the parish', p. 24.

¹⁰⁵ J. A. Sharpe, *Crime in Early Modern England 1550-1750* (2nd edition, London, 1999), p. 190.

¹⁰⁶ Andy Wood, *Riot, Rebellion and Popular Politics in Early Modern England* (Basingstoke, 2002), p. 41.

¹⁰⁷ Martyn Bennett, ' "And these without number": riot and rough grazing; Shepshed, Leicestershire 1604', unpublished paper. I would like to thank Dr Bennett for resurrecting this paper for me.

¹⁰⁸ TNA: PRO: STAC8/153/2, quoted in Manning, *Village Revolts*, p. 116.

¹⁰⁹ For example, three men dressed as women during the riots in Braydon Forest, Dorset, in 1631. (Sharp, *In Contempt of All Authority*, p. 105) Male rioters might also dress in women's clothing to avoid recognition. For female rioters and male cross-dressing during eighteenth-century food riots, see Thompson, *Customs in Common*, pp. 305-36.

[taking] to the streets as a form of community participation'.¹¹⁰ Joint actions of a crowd, however, need to be contextualized because, although rioters had a common purpose, their motives might vary widely.¹¹¹ The central archives of riot may enable the historian to put names to the faces in the crowd; in turn, by identifying these people in local records, their interests, and hence their motives for rioting, may be recovered. But, as we shall see, these archives need to be treated with caution.

The early 1640s witnessed numerous outbreaks of disorder in various parts of the country. The general lawlessness that prevailed between the assembling of the Long Parliament in 1640 and the outbreak of civil war in 1642 has been vividly described by Brian Manning as a 'rising tide of protest and riot' that rolled through the countryside.¹¹² Although Morrill and Walter have agreed that disturbances were at their greatest in the early 1640s, they have argued that this was not, however, 'the culmination of a rising trend' since there had been a 'changing geography of disorder'.¹¹³ The Midlands, the scene of large-scale enclosure riots at the beginning of the century, was notably quiet; in the mid-century, enclosure riots were mostly confined to forests and fens, areas where 'the radical challenge of enclosure to local economies prompted, and local social and economic structures permitted, the persistence of active, collective resistance'.¹¹⁴

Morrill and Walter have also urged caution over the interpretation of records of riot during this period since the legal mechanisms for dealing with riot changed. Local judicial activity ceased in some areas; Star Chamber, frequently occupied with

¹¹⁰ R. L. Woods, 'Individuals in the Rioting Crowd: A New Approach', *Journal of Interdisciplinary History*, 14 (1983), p. 1.

¹¹¹ For the need to contextualize crowd action, see Walter, *Understanding Popular Violence*, p. 7.

¹¹² Brian Manning, *The English People and the English Revolution* (2nd edition, London, 1991), quotation from p. 195. For another description of lawlessness during the 1640s, see David Underdown, *Revel, Riot and Rebellion: Popular Politics and Culture in England 1603-1660* (Oxford, 1985), pp. 159-62.

¹¹³ J. S. Morrill and J. D. Walter, 'Order and Disorder in the English Revolution', in A. Fletcher and J. Stevenson (eds), *Order and Disorder in Early Modern England* (Cambridge, 1985), p. 139.

¹¹⁴ Morrill and Walter, 'Order and Disorder', p. 139.

the punishment of riot, was abolished; the House of Lords took over the judicial business of Star Chamber.¹¹⁵ The net results are that, for the 1640s, few local records of riot have survived. The central records of riot are, paradoxically, more accessible than for earlier decades.¹¹⁶ Morrill and Walter have, therefore, suggested that as parliament was both the focus of contemporary concern with civil disorder and also played a leading role in the prosecution of riot, the survival of parliamentary records has served to distort the scale of disorder during the mid-century as a whole.¹¹⁷ On the other hand, since the enclosures being attacked were mostly those that had been created by royal and aristocratic landowners in former common land in fens and forests, it is scarcely surprising that those landlords took their grievances to the House of Lords, the very court that was most likely to be sympathetic to their cause.¹¹⁸

The jurisdictional move from Star Chamber to the Lords has had another, less obvious consequence for historians of riots. Riot was 'reported' differently to the two courts. Star Chamber had exercised a predominantly civil jurisdiction, concerned mainly with real property and as a consequence heard trials for riot because they were attacks on property.¹¹⁹ To prove a riot, and therefore bring their

¹¹⁵ For a contemporary treatise on the Star Chamber, see, for example, BL: Harleian MS 1226, 'A Treatise concerning the Court of Starre Chamber', compiled, sometime before 1635, by William Hudson, esquire, of Grays Inn. For the history and functions of the High Court of Star Chamber, see, for example, J. H. Baker, *An Introduction to English Legal History* (3rd edition, London, 1998), pp. 136-38; numerous articles by Thomas Barnes, but especially T. G. Barnes, 'Star Chamber and the Sophistication of the Criminal Law', *Criminal Law Review* (1977), pp. 316-26; T. G. Barnes, 'Star Chamber Litigants and Their Counsel, 1596-1641', in J. H. Baker (ed.), *Legal Records and the Historian* (London, 1978), pp. 7-28; J. A. Guy, *The Cardinal's Court: The Impact of Thomas Wolsey in Star Chamber* (Hassocks, 1977); J. A. Guy, *The Court of Star Chamber and its Records to the Reign of Elizabeth I* (London, 1985).

¹¹⁶ Star Chamber records are mainly in manuscript and most of those from the reign of Charles I are missing whereas calendars of the records of the House of Lords, both its journals and main papers, have been published.

¹¹⁷ Morrill and Walter, 'Order and Disorder', p. 138.

¹¹⁸ Although landlords may have expected the House to be sympathetic towards them, the Lords sometimes judged in favour of tenants, especially where a landlord had been over-zealous.

¹¹⁹ Frequently in cases that were not directly concerned with riot plaintiffs included riot within the crimes committed by their adversary in order to ensure that their case would be heard in Star

case within the court's competence, technically litigants had only to demonstrate that three people had gathered and broken the peace, or had gathered with the intention of doing so. However, in order to emphasise the riotous nature of their adversaries' actions, landowners, or the Attorney-General on their behalf, frequently embellished their information by accusing those who had attacked their property of other offences that also fell within the competence of that court, such as combination, forcible entry, destruction of property, bearing of weapons and/or raising a common purse.¹²⁰ Because few Star Chamber cases progressed all the way from plaintiff's bill to hearing and decree, many being settled out of court or falling into abeyance, fully documented cases are rare. Extant files of evidence, however, might include some of the following: the defendants' answer to the bill; a replication from the plaintiff; (rarely) a rejoinder; examinations of witnesses; a judgement.¹²¹ Since the plaintiff's accusations were necessarily exaggerated and the defendants' answers commensurately toned down, their contents should not be taken at face value. They do, nevertheless, provide the historian of Elizabethan and Jacobean riot with insights into the organisation and conduct of those particular enclosure riots.¹²²

In contrast, when, in the 1640s, landowners petitioned the Lords regarding riots on their property, they did not need to translate the occurrences into riots as legal fictions in order to justify bringing their petition before their peers. Destruction and invasion of property had occurred and they were seeking the means both to restore order and to prevent disorder recurring at a later date. When these matters

Chamber. In these instances, 'riot' had 'become virtually a term of art, an allegation for procedural advantage more often than a substantive charge'. (Barnes, 'Star Chamber Litigants', p. 13.)

¹²⁰ Sharpe, *Crime in Early Modern England*, p. 190.

¹²¹ Barnes, 'Star Chamber and the Sophistication of the Criminal Law', pp. 317,321.

¹²² See, for example, the discussion of Elizabethan and Jacobean enclosure riots in Manning, *Village Revolts*, *passim*. In 1620, the Solicitor-General, Sir Thomas Coventry, claimed that the enclosure rioters at Berkhamsted 'did in most violent, furious, and outrageous manner cutt, breake, and sawe downe all the pales, postes, and Rayles wherewith the sayd Parke was ... inclosed ... using many greivous threatates, and menaces towards the Keepers of the sayd Parke and other Officers and servantes of his highnes'. (TNA: PRO: STAC8/32/16, document 6.)

were brought before the Lords, therefore, petitioners frequently described the effort and money that had been expended on improvement prior to enclosure and consequently they measured the extent of the destruction in terms of lost revenue from rents and/or crops.¹²³ The contents of the Lords' Main Papers, therefore, have a different emphasis, being concerned more with damage to property than with lawbreaking *per se* and so provide evidence that is not directly comparable with that generated in Star Chamber. As we shall see, evidence in the Main Papers discloses more about the results of the rioters' activities than about the activities themselves. Nevertheless, the fact that landlords petitioned the House meant that alleged rioters were frequently summoned to appear before the Lords, within the very building that lay at the heart of the political nation.

v. Politics

Debate has been raging over the 'political' nature of early modern enclosure riots ever since Roger Manning's oft-quoted assertion that they were merely 'village revolts' characterised by 'pre-political' behaviour.¹²⁴ Manning's study of the numerous enclosure riots that resulted in prosecutions in Star Chamber during the reigns of Elizabeth and James I concluded that the participants in these riots 'usually lack rights of political participation outside their local communities; their motives are devoid of political consciousness and their writings or utterances do not employ a political vocabulary'. In contrast, more recent studies have demonstrated that the 'middling sort', who frequently participated in enclosure riots, were often

¹²³ For example, when, in 1642, the Commissioners of the Prince's Revenue (for the Duchy of Cornwall) petitioned the Lords regarding riots in Berkhamsted and also in Mere (Wiltshire), they complained that the improved rents of £70 and £20 per annum respectively that had resulted from the enclosures would be lost unless order were restored. (HLRO: HLMP: petition of the Commissioners of the Prince's Revenue, 25 May 1642.)

¹²⁴ Manning, *Village Revolts*, p. 2.

freeholders, eligible to vote in parliamentary elections.¹²⁵ Indeed, during the late sixteenth and early seventeenth centuries the proportion of the population that was enfranchised increased considerably. This increase was a consequence of two separate economic factors: firstly, due to financial expediency, many landlords attempted, and sometimes succeeded, in replacing copyhold with freehold, thus increasing the number of freeholders; secondly, due to rapid price inflation, more freehold estates came to be worth more than 40s, the threshold for the electoral franchise.¹²⁶

Manning seems to have conceived of politics as ‘the governmental activities of the ruling elite vested in the central state, and any state-centred disputes generated thereby’.¹²⁷ He implied that rioters neither appealed to central government nor attacked it. He therefore considered small-scale enclosure riots to be non-political because they were local disputes that did not directly challenge the crown and its policies. Only widespread disturbances such as the Midland Revolt of 1607 and the Western Risings of 1626-31 would be ‘political’ according to Manning’s definition.¹²⁸ Buchanan Sharp, however, concluded that even the Western Risings were not ‘political’. He suggested that the threat posed to the authorities by the riots that raged intermittently in the West Country between 1586 and 1660 arose simply from the number of rioters involved and from the wide geographical spread of the outbreaks; the unrest itself, he argued, was neither co-ordinated nor aimed at central government. If, on some manors, landlords were royalty or nobles, it was their

¹²⁵ For a detailed discussion of participation in riots by the middling sort, see below. (Chapter 1, section vi, ‘The local experience: the social profile of rioters’.) For a detailed discussion of the causes and effects of increased enfranchisement in the seventeenth century, see Chapter 6, section vi, ‘From the politics of the parish to the politics of the realm’.

¹²⁶ Hindle, *State and Social Change*, pp. 43, 226; R. W. Hoyle, ‘Tenure and the Land Market in Early Modern England: Or, a late Contribution to the Brenner Debate’, *Economic History Review*, 2nd series, 43 (1990), *passim*.

¹²⁷ Wood, *Politics of Social Conflict*, p. 252.

¹²⁸ Manning, *Village Revolts*, p. 3.

enclosure policies, rather than their status, that were under attack. During the civil war period, for example, Sharp found that: 'At least for the West, there is no evidence at all for the assertion that the riots were directed at royalist landlords because they were royalists'.¹²⁹ Keith Lindley also described the destruction of fen drainage works as essentially local disturbances brought about by groups of fen-dwellers who were concerned to preserve their former way of life. That the crown was the landlord and/or undertaker was simply coincidental; their attacks, against the instruments rather than the agents of change, were not politically motivated. 'Fenland rioters in the seventeenth century did not give expression to political feelings, but contented themselves with drawing attention to specific grievances of immediate concern while in most other respects observing their traditional place and obedience.'¹³⁰ Thus Manning, Sharp and Lindley all concluded that enclosure rioters had no political axe to grind.

In effect, the definition of 'politics' offered in the historiography of riot during the 1980s referred almost exclusively to the content of rioters' grievances: that is, whether they were concerned with, or related to, the politics of the realm. In fact, 'political history' and 'popular politics' were not on the research agenda of these historians, whose work on countless early modern riots firmly placed resistance in its social context. They were interested in the effects of enclosure on the communities in which the unrest occurred rather than in any ideology that might have lain behind that unrest. Indeed, as Tim Harris has pointed out, their arguments were developed in response to the work of certain historians, such as George Rudé, Edward Thompson and Brian Manning, 'who were thought to have been too uncritical in according a degree of political awareness to the unenfranchised

¹²⁹ Sharp, *In Contempt of All Authority*, p. 263.

¹³⁰ Lindley, *Fenland Riots*, p. 65.

classes'.¹³¹ In his work on the English revolution, Brian Manning had seen political implications in every riot, suggesting, for example, that 'the mass of peasants ... waged a fierce struggle against the crown from the moment the drainage was first mooted'.¹³² He interpreted the numerous enclosure riots during the early 1640s as attacks on the policies of royalty and aristocrats.¹³³ An alternative reading to Manning's interpretation could be that voiced by the opportunistic rioters in Newport (Essex), who, in April 1643, broke into an enclosure made by the earl of Suffolk, saying that they would '*take advantage of theise tymes* least they have not the like againe'.¹³⁴

The fact that Roger Manning, Sharp and Lindley refused, or failed, to acknowledge the existence not only of 'popular politics' but also of any links between local protest and public policy emphasises the chasm that had opened up between political and social historians in the 1980s. These two groups were, however, looking at two sides of the same coin without ever recognising the common currency. Patrick Collinson, summing up this dissociation, called for 'a new political history, which is social history with the politics put back in, or an account of political processes which is also social'. Clearly, he considered the two to be mirror images. He urged historians 'to explore the social depth of politics, to find signs of political

¹³¹ T. Harris, 'Introduction', in T. Harris (ed.), *The Politics of the Excluded, c.1500-1850* (Basingstoke, 2001), p. 3. Harris acknowledged the significance of the contribution made by these historians but suggested that their own political stance may have coloured some of their conclusions. John Walter has suggested, in private conversation, that Keith Lindley's work was intentionally a direct and contradictory response to that of Brian Manning, his PhD supervisor.

¹³² Manning, *The English people*, p. 194.

¹³³ Manning's Marxist interpretation of the fenland riots was temperately endorsed by Clive Holmes, who cited the willingness of the Axholme commoners to ally themselves with the Levellers as evidence, at the very least, of an awareness of central politics for such an alliance would pressure the drainers through parliament and the law courts. (C. Holmes, 'Drainers and Fenmen: the problem of popular political consciousness in the seventeenth century', in Fletcher and Stevenson (eds), *Order and Disorder*, p. 167.) Interestingly, Holmes uses virtually the same sources as Keith Lindley but draws the opposite conclusions

¹³⁴ HLRO: HLMP: bundle dated 28 April 1643, affidavits of John Parish and John Flaske of Newport, 25 April 1643, (emphasis added). O'Riordan has considered various incidents when certain categories of land became subject to widespread popular expropriations between 1640 and 1660. (C. O'Riordan, 'Popular exploitation of enemy estates in the English Revolution', *History*, 78 (1993), pp. 183-200.)

life at levels where it was not previously thought to have existed'.¹³⁵ Drawing together examples from earlier work of both medieval and early modern scholars who had identified political activity amongst the 'ordinary householders and proprietors', he demonstrated that social historians already recognised that such people could appreciate both the wider implications of their actions and how they might affect the wider political nation. Collinson's signposts to a new political history pointed in two directions: to vertical power relations between the man in the field and central government, that is, macro-politics; and to horizontal power relations between members of a community, that is micro-politics. When and where the two planes intersected, politics not only became more complex but also revealed more about local attitudes, motivations and relationships.

Vertical power relations might include reactions to government directives regarding taxation or religious practices; or even direct appeals to parliament in the form of petitions. This indeed was 'popular politics' in the sense of engagement with national issues or bodies. Some medieval historians have considered whether even people below the office-bearing class were 'political' beings in this sense. In dealings with the crown and in complaints against royal policies, which sometimes turned into rebellion, medievalists found evidence of popular politics and its influence, through popular opinion, on government policy.¹³⁶ Such popular politics have been also recovered in early modern communities. Ethan Shagan's discussion of the political content of rumours during the reign of Henry VIII reveals 'the power

¹³⁵ P. Collinson, 'De Republica Anglorum: Or, History with the Politics Put Back', in P. Collinson (ed.), *Elizabethan Essays* (London, 1994), p. 11. (Originally this was given as his inaugural lecture as Regius Professor of History in the University of Cambridge, delivered on 9 November 1989.)

¹³⁶ I. M. W. Harvey, 'Was there Popular Politics in Fifteenth-Century England?', in R. H. Britnell and A. J. Pollard (eds), *The McFarlane Legacy: Studies in Late Medieval Politics and Society* (New York & Stroud, 1995), pp. 155-74. For a discussion of manorial jurors and how their position gave them a political rôle regarding central government, see R. B. Goheen, 'Did Peasants have a Politics? Village Communities and the Crown in Fifteenth-Century England', *American Historical Review*, 96 (1991), pp. 42-62.

of rumours as mechanisms through which ordinary people could comment upon their political circumstances'.¹³⁷ Diarmaid MacCulloch, commenting on the extent of political awareness in Tudor Suffolk villages, observed that the scale of discontent in 1525 and 1549 suggested that 'for many, the wider focus was there. ... One can find traces of concern for and participation in the affairs of Parliament beyond the small world of gentry politics'.¹³⁸ Richard Hoyle has explored the 'lobbying' of parliament by local Tudor communities regarding their own immediate concerns, with the corollary that they expected parliament to act on their behalf.¹³⁹ Clearly such action had the support of a member of parliament but the initial step was taken by ordinary people, who were aware of parliament's function.¹⁴⁰ John Walter's discussion of the relationship between crown and crowd cited examples of enclosure rioters who 'perceived an active alliance between themselves and their monarch' thus legitimating their protests.¹⁴¹ When David Underdown attempted a geographic mapping of the origins of popular allegiances during the civil war in the West Country, he traced the contours of popular politics and found degrees of involvement of all levels of local society.¹⁴²

Collinson's 'horizontal power relations' comprised relationships within the nation's component local administrative units that, until then, historians had largely ignored. By altering the focus of 'politics' in this way, political history could be

¹³⁷ E. Shagan, 'Rumours and popular politics in the reign of Henry VIII', in Harris (ed.), *The Politics of the Excluded*, p. 30.

¹³⁸ D. MacCulloch, *Suffolk and the Tudors: Politics and Religion in an English County 1500-1600* (Oxford, 1986), p. 332.

¹³⁹ R. W. Hoyle, 'Popular Politics in the early sixteenth century: some leaps in the dark', unpublished paper given at the Department of Local History, University of Leicester, 5 February 1998.

¹⁴⁰ A petition, datable to 1553, from representatives of the 'pore communalty' of Norfolk to Mary Tudor (and, by implication, parliament) seeking legislation against oppression by the gentry, demonstrates similar political awareness. A transcript of this petition has been published, with a commentary, in R. W. Hoyle, 'Agrarian agitation in mid-sixteenth-century Norfolk: A petition of 1553', *Historical Journal*, 44 (2001), pp. 223-38.

¹⁴¹ J. Walter, 'Crown and Crowd: popular culture and popular protest in early modern England', in *Sotsial'naia istoriia: problemny sinteza* (Moscow, 1994), p. 242.

¹⁴² Underdown, *Revel, Riot and Rebellion*, especially Chapter 4.

incorporated with the work of early modern social historians.¹⁴³ In 1996, Keith Wrightson defined 'politics' as 'the social distribution and use of power' within any given community, thus locating politics in power relationships that existed within the locality.¹⁴⁴ 'The politics of the parish' encompassed 'the rich variety of political processes which can be observed in the local community': within the family; the neighbourhood; the workplace; the parish church; and particularly within the administration of increasing obligations imposed by central government. Of course, as Wrightson's copious footnotes testify, social historians were already producing such studies. He did not 'invent' this type of history but he did define, and refine, it.

Wrightson particularly identified custom as a focus of parish politics. The foregoing discussion of custom has demonstrated that it was both a cause and seat of contest.¹⁴⁵ Enclosure riots, which took place when inhabitants united against an enclosing landlord in defence of customary practices and rights, were invariably political. Both the act of violence itself and the discussion that preceded it were products of the use of power and negotiation within the community. Indeed, one of the aims of Hindle's study of the enclosure dispute at Caddington was 'to demonstrate the ways that this particular reading of riot might illuminate the negotiation of social and political authority in early Stuart England'.¹⁴⁶ All enclosure disputes inevitably had a horizontal political dimension for they arose from contests within the locality; however, the most significant contribution to our knowledge of popular politics in early modern England can be made by historians of customary disputes and subsequent unrest on manors belonging to leading aristocrats, and in

¹⁴³ Such studies are virtually impossible for medieval communities because insufficient series of records survive.

¹⁴⁴ Wrightson, 'The politics of the parish', p. 11. The political theorist Adrian Leftwich linked politics with the distribution of power in A. Leftwich, *Redefining Politics: People, Resources and Power* (London, 1983), p. 11, quoted in Wood, *Riot, Rebellion and Popular Politics*, p. 11.

¹⁴⁵ See above, pp. 4-5.

¹⁴⁶ Hindle, 'Persuasion and Protest', p. 43.

particular to the crown, because such disputes, by definition, took place at the junction of horizontal and vertical politics. The two case-studies here will consider two such communities.

The definition of ‘politics’ used by social historians seems to have come full circle with the collection of essays edited by Tim Harris: *The Politics of the Excluded, c.1500-1850*.¹⁴⁷ Had Harris applied Wrightson’s broad definition that gave politics a presence everywhere, no-one would have been excluded. Although Harris acknowledged the validity of ‘the politics of the parish’, he nonetheless suggested a return to the more narrow meaning of the term ‘politics’, that is, ‘interaction with central government’. The ‘excluded’, therefore, were those not usually associated with the politics of the nation. It is, however, precisely the politics of the excluded, I would suggest, that comprised the ‘vertical politics’ discussed above. According to Wrightson, enclosure riot was always political; in communities where the crown was landlord, such disputes were more acutely political. It would be unwise, however, to necessarily impute political motives, in Harris’s sense, unless it were possible to find them in the rioters’ own language of resistance.

Traces of such a language of resistance are, however, not easy to find. Interrogatories posed to defendants, plaintiffs and witnesses were leading questions, but these questions sometimes preserved ‘political’ remarks that were alleged to have been made. The fact that such remarks were reported and recorded demonstrates, at the very least, that the authorities were aware of, or concerned about, rioters’ attitudes towards authority.¹⁴⁸ Depositions made in Star Chamber or before various commissioners may also provide evidence of awareness of, and resistance to, central

¹⁴⁷ T. Harris (ed.), *The Politics of the Excluded, c.1500-1850* (Basingstoke, 2001).

¹⁴⁸ As we shall see, the interrogatories posed to witnesses at Whittlesey contained an example of highly politicised speech by the alleged rioters. (Chapter 5, part 3, section iii, ‘May 1643: attacks on property and people’.)

policies. By their very existence, petitions to parliament from commoners involved in enclosure protests display their political awareness and appreciation of the authority and power of either House. Given that political speech uttered in non-confrontational situations was rarely reported, riot (and its prosecution) can provide 'a privileged point of access into popular political culture. ... It allows subordinate groups rendered otherwise silent ... to testify to their attitudes and beliefs.'¹⁴⁹ Even when the central archives do not report rioters' words, they do reveal official attitudes towards, and reactions to, popular political protest: vertical politics. Where those prosecuted can be identified in local records, relationships between them, and also with those who failed to support them, reveal horizontal politics. The politics of resistance lie at the interface of Collinson's two planes.

vi. The local experience: the social profile of rioters

But who were the participants in the politics of resistance? From which levels in society did they come? If it is possible to answer the first question, it is necessary to try to answer the second. The consequences of the economic upheavals experienced in early modern England emphasise the fundamental differences between the various social groups. Wrightson has suggested that by the mid-seventeenth century wholly wage-dependent labouring families constituted at least half the population.¹⁵⁰ The chasm between these families ('the poorer sort'; 'the meaner sort') and the governing elite ('the better sort') was bridged by the 'middle sort'.¹⁵¹ These were:

¹⁴⁹ Walter, 'Crown and Crowd', p. 237.

¹⁵⁰ Wrightson, *Earthly Necessities*, p. 197. For a survey of the economic and social aspects of early modern society, see *Earthly Necessities*, Chapters 8 and 9, and K. Wrightson, *English Society 1580-1680* (London, 1982), especially Chapters 1 and 2.

¹⁵¹ For a summary of the 'language of sorts', see K. Wrightson, "'Sorts of People" in Tudor and Stuart England', in J. Barry and C. Brooks (eds), *The Middling Sort of People: Culture, Society and Politics in England, 1550-1800* (Basingstoke, 1994), pp. 28-51. The term 'middle sort' itself was not widely used as a social ascription until the 1640s.

a composite body of people of intermediate wealth, comprising substantial commercial farmers, prosperous manufacturers, independent tradesmen and the increasing numbers who gained their livings in commerce, the law and the provision of other professional services.¹⁵²

Andy Wood has listed their likely personal attributes: 'the ideal urban 'middling' householder was not only protestant, sober, male and industrious: he was also office-holding and literate'.¹⁵³ Rather confusingly, Wood goes on to equate these people with rural yeomen, whom he terms the 'rural better sort'. This slippage nicely illustrates Wrightson's point, reiterated by Henry French, that whilst in a national and regional context such people might be regarded as the 'middle sort', in their local context they were best described as either 'belonging to or else aligned with "the better sort"'.¹⁵⁴ As office-holders, they were influential within the local community and indeed, since many gentlemen and aristocrats were non-resident landlords, it was the office-holders who comprised the local elite.

Whilst it can be argued that, over time, local elites distanced themselves socially from the poorer sort within their community, their economic interests, particularly the defence of common rights, sometimes overlapped. Indeed, the social composition of rioting groups reveals much about local politics. Responses to change were dictated by common interests and careful analysis of surviving records show how interests within communities varied and shifted.¹⁵⁵ Permutations of configurations of association within threatened societies were legion. Stephen Hipkin has highlighted the 'federation of convenience occasioned by the struggle to maintain access to the resources of Faversham Blean'. To create this federation

¹⁵² Wrightson, *Earthly Necessities*, p. 201.

¹⁵³ Wood, *Riot, Rebellion and Popular Politics*, p. 123.

¹⁵⁴ Wrightson, "'Sorts of People'", p. 44. The phenomenon is discussed at greater length in H. R. French, 'Social Status, Localism and the "Middle Sort of People" in England, 1620-1750', *Past & Present*, 166 (2000), pp. 66-99 and in H. R. French, 'The search for the "middle sort of people" in England, 1600-1800', *Historical Journal*, 43 (2000), pp. 277-93.

¹⁵⁵ See the discussion in Hindle, *State and Social Change*, pp. 64-65.

‘loops of association’ were formed that in other circumstances would never have arisen.¹⁵⁶ Such associations were time-specific and situation-specific: in the same locality different combinations might join together for different purposes.

Enclosure of all or part of the common of a particular manor might have a direct impact on the household economies of most inhabitants. Firstly, it might restrict such activities as small-scale animal grazing or fuel gathering, on which poorer families depended either for subsistence or to supplement their waged-income.¹⁵⁷ Secondly, it would restrict the opportunities for large-scale animal grazing on which commercial pastoral farmers relied. As we shall see, in manors where the common waste covered several thousand acres, commercial farmers might be of fairly low social status. Enclosure might also have indirect results, such as increased reliance on poor relief. This might prompt rate-payers to object, even if they themselves had not been directly reliant on the common. Certainly, his extensive research into enclosure protests has convinced John Walter that in many communities self-interest was a deciding factor regarding participation. Retention of the common would not only enable substantial commoners to continue their economic ventures centred upon it, but also ensure that poor rates remained at former levels because the poor would still be able to supplement their income from it. Walter therefore concluded that wealthy rioters were motivated by commercial considerations rather than by compassion.¹⁵⁸ Hindle’s reading of the motives of the rioters’ leaders at Caddington was more generous. Although, arguably, the substantial copyholders had led the riot in order to retain their right to pasture large

¹⁵⁶ Hipkin, “‘Sitting on his Penny Rent’”, p. 23.

¹⁵⁷ For a detailed discussion of common rights and the poor, see Steve Hindle, *On the Parish? The Micro-Politics of Poor Relief in Rural England c.1550-1750* (Oxford, 2004), Chapter 1, part 2, pp. 27-47, ‘The Exploitation of Common Rights’.

¹⁵⁸ *Ex info.* John Walter, following his paper ‘Popular opposition to enclosure’ given at Oxford, 4 April 1998.

flocks of sheep on the common, since they would have been adequately compensated at enclosure, he imputed altruistic motives to them. By objecting to the enclosure they were indeed acting to preserve their common rights, but more tellingly they were acting on behalf of their poorer neighbours who were protected from destitution by the common, thus articulating 'that peculiar combination of paternalism and self-interest so characteristic of English rural elites'.¹⁵⁹

In many communities objections to enclosure probably only amounted to grumbling. Unless individuals were willing and able to galvanise the grumblers into a more positive response the proposed changes took place unchallenged. Effective leadership often came from the local elite. John Walter found that the 1596 'Oxfordshire Rising' failed precisely because such people refused to participate. Although Bartholomew Steer allegedly had widespread support amongst weavers, servants to the gentry and his poor neighbours, he had none from more substantial men. This was crucial because 'Steer and the others lacked the authority to translate discontent into disorder'.¹⁶⁰ Andy Wood's analysis of the leaders of early modern riots has demonstrated how leadership by the middling sort in local enclosure protests was vital and that, as the period progressed, in many communities 'village élites were more reluctant to place themselves at the head of popular protest'.¹⁶¹ They gradually distanced themselves from such behaviour and sided with the rulers, becoming more sensible to their responsibilities. Wood went on to suggest that those communities where the middling sort did continue to resist enclosure were 'united by the intervention of some disruptive outside force'.¹⁶²

¹⁵⁹ Hindle, 'Persuasion and Protest', pp. 72-73.

¹⁶⁰ Walter, 'A "Rising of the People"?', p. 125

¹⁶¹ Wood, *Riot, Rebellion and Popular Politics*, pp. 90-91.

¹⁶² Wood, *Riot, Rebellion and Popular Politics*, p.90.

Whereas the most recent scholarship has focussed on the participation in protest of the 'middling sort' (the local 'better sort'), earlier work looked for evidence of gentry support. Contrary to previous studies of the Western Risings, which had suggested that the rioters were yeomen and husbandmen, aided and abetted by gentry, Sharp found no evidence of any gentry involvement.¹⁶³ He argued that since the enclosures had been ratified by agreements, the compensation awarded to landholders gave them little cause to object. His analysis of the known rioters who were fined in Star Chamber suggested that they were mainly artisans; the countless other unnamed rioters were probably landless cottagers, none of whom were entitled to receive compensation for loss of customary use-rights.¹⁶⁴ He noted that it was widely believed in government circles that the lower orders were incapable of organizing and directing themselves and, consequently, that persons of quality were behind the Western Rising. Sharp concluded, however, that the few participants who were above the rank of artisan were probably expressing dissatisfaction with their allotment, rather than organising objections to enclosure *per se*. He suggested that the riots were spontaneous, local responses to grievances rather than organised protests co-ordinated by a single group of ringleaders.¹⁶⁵

In his study of fenland riots, Keith Lindley disagreed with Sharp regarding the involvement of the gentry but conceded that regional differences played a large part in the issue of participation. Fenland communities might be divided – some commoners accepted allocations; some members of the local élite were drainers – but generally drainage schemes rode roughshod over local interests and property rights, consequently uniting opposition to them. The allocation of drained land to the

¹⁶³ Sharp was questioning the findings of Allan and of Kerridge. (D. G. C. Allan, 'The Rising in the West, 1628-1631', *Economic History Review*, 2nd series, 5 (1952), pp. 76-85; E. Kerridge, 'The Revolts in Wiltshire Against Charles I', *Wiltshire Archaeological Magazine*, 57 (1958-60), pp. 64-75.)

¹⁶⁴ Sharp, *In Contempt of All Authority*, Chapter 5: 'Participants in the Western Rising', *passim*.

¹⁶⁵ Sharp, *In Contempt of All Authority*, p. 97.

undertakers in recompense for their trouble and charge raised objections from all levels of local society.¹⁶⁶ Lindley concluded that the larger riots (involving a hundred or more participants) were organised, or at least encouraged, by local gentry, who either participated openly or covertly instigated and directed protests and persisted in challenging the undertakers in the law courts despite injunctions to the contrary.¹⁶⁷

The models of the social profile of participants in riots constructed by Sharp and Lindley were regional models, rather than models for individual local communities. Their studies, based on central archives, were wide-ranging in time and place but as a consequence their findings regarding the leadership of, and participation in, enclosure riots were broad generalisations. The validity of these models, therefore, requires investigation at the local level because they contain no collective prosopography of protesters, nor do they display an understanding of the complexities of the economic innovations of the time and the effects that these had on the local communities that resorted to riot. When these works are compared with more recent local studies of individual riots, such as those at Berkhamsted, Caddington and the Faversham Blean, it is evident that, firmly grounded in the local economic context, the latter provide a more nuanced reading of the social alignments forged by opposition to enclosure.

If the social status of rioters requires re-investigation, then so too does their gender. The popular belief that women could not be prosecuted in courts arose in part from the legal theory that they were less responsible for their actions than men and so were likely to have been 'led' in to law-breaking by their husbands, rather

¹⁶⁶ Lindley, *Fenland Riots*, pp. 255-56.

¹⁶⁷ Lindley, *Fenland Riots*, Chapter 2, *passim*. In contrast, riots involving only the poorer elements of society were invariably small-scale disturbances.

than taking the initiative themselves.¹⁶⁸ Whilst some female rioters may have been urged on by their menfolk, however, others acted on their own behalf.¹⁶⁹ When filling in enclosing ditches, the women of Shepshed 'were working alone in a systematic manner, under their own instruction'.¹⁷⁰ The logic of female participation in grain riots has long been appreciated. They were the ones who purchased grain at the market and knew its 'just' price; similarly, regarding enclosure riots, in rural communities the pasturing of animals was the province of women, who would also have attended markets as buyers and sellers of animal products.¹⁷¹ In general, in those records of riot where women participants are noted, they are rarely named.¹⁷² Whether female anonymity was due to social status or to gender is unclear; in either case, the consequence is that their social profile cannot be recovered. The silence of the records, and the historian's consequent inability to identify these women, emphasises the methodological problems encountered when trying to reconstruct the social profile of enclosure rioters. Those named in central records, moreover, are likely to have been the ringleaders. What about the 'divers other evill disposed persons as yett unknowen'?¹⁷³ Faced with large-scale anonymity, historians can at least make various logical deductions about the identity of such people. As we shall see, by reconstructing local configurations of interest, it is possible to suggest the social profile of numerous unnamed participants.

¹⁶⁸ Wood, *Riot, Rebellion and Popular Politics*, p. 106.

¹⁶⁹ Many examples of female participation are provided in R. A. Houlbrooke, 'Women's social life and common action in England from the fifteenth century to the eve of the civil war', *Continuity and Change*, 1 (1986), pp. 171-89.

¹⁷⁰ Bennett, ' "And These Without Number" ', p. 5.

¹⁷¹ Bennett, ' "And These Without Number" ', p. 8 and his references in note 22.

¹⁷² For example, at Berkhamsted in 1620 the 'five women ... taken in a Late great Ryott' were not identified. (TNA: PRO: PC2/30, p. 550, 9 July 1620.) However, two female rioters, Elizabeth Birchmore and Alice Gazeley, were named at Caddington. (Hindle, 'Persuasion and protest', p. 57)

¹⁷³ The actual phrase is from TNA: PRO: STAC8/32/16, document 6. Similar words were used in most riot cases.

Studies based on central archives have, therefore, failed to place enclosure riots in their local context and thus have produced rather one-sided, sometimes inaccurate, accounts of what actually happened on the ground.¹⁷⁴ Had they attempted to locate the actors within local sources, more intricate patterns of alignment would have emerged. The ‘loops of association’ detected by Hipkin amongst the opponents of the enclosure of the Faversham Blean could only be reconstructed from local records, which proved links between otherwise unlikely confederates. The enclosure temporarily united members of that society who, under other circumstances, might find themselves in opposition. In this instance, a broad coalition of freeholders and their tenants were ‘operating in functional if not ideological alliance with those exercising marginal use-rights in the waste’.¹⁷⁵ Similarly, Hindle’s detailed analysis of the evidence at Caddington is ‘interesting precisely because of the complexity of the social and economic alignments it reveals’.¹⁷⁶ Such shifting configurations of interest within the social order, which only become apparent from local sources, reveal the micro-politics that obtained within that community at that time.

vii. The micro-politics of custom

Contrary to the impression that has perhaps been created by the various studies of early modern enclosure riots, riot was an atypical occurrence.¹⁷⁷ Consequently it has been suggested that the study of riot produces an ‘episodic history of popular

¹⁷⁴ Regarding inaccuracies, for example, Brian Manning assumed that the second riot at Berkhamsted had taken place in February 1641, just before a petition had been presented to the Lords, whereas it had actually taken place on 25 August 1640. (Manning, *English people*, p. 194, following the *Lords’ Journal*; HALS: AH 2794 and AH 2800 and G. H. Whybrow, *The History of Berkhamsted Common*, (London, undated but c.1934), pp. 48-49, clearly state that the riot took place in August 1640.)

¹⁷⁵ Hipkin, ‘“Sitting on his Penny Rent”’, especially pp. 23-27, quotation from p. 27.

¹⁷⁶ Hindle, ‘Persuasion and Protest’, p. 71.

¹⁷⁷ This point is emphasised in Walter, *Understanding Popular Violence*, p. 2.

politics' and of the places in which riot occurred.¹⁷⁸ Since riots were precipitated by abnormal events or impositions, they were uncharacteristic of daily life within local communities. Theoretically, the study of rumour, gossip or grumbling in alehouse or market square would reveal more about local (horizontal) politics and custom; in practice, however, such conversations were rarely recorded. Riot, on the other hand, 'provides a moment when the opaque surface of the past is punctured'.¹⁷⁹ Because official reactions to such protests generated records, riots allow 'subordinate groups rendered otherwise silent by the inequalities of literacy and preservation of the historical record to testify to their attitudes and beliefs'.¹⁸⁰ Thus study of riot can be justified because the records generated by riot unlock doors to local societies that would otherwise remain closed.

Of course, provided sufficient local records survive, the hierarchy and structure of any community can be traced. Only when the various loops of association generated by discord are unravelled, however, can the dynamics of local power relations within that community be recovered. Thus manorial surveys disclose the identity of principal landholders; but tensions, for example over access to commons, indicate where their interests lay. General financial provision for poor inhabitants might be revealed in overseers' or churchwardens' accounts; but specific concerns for their well-being were often only expressed when enclosure threatened their access to common resources.¹⁸¹ The politics of poor relief dictated that land allocated to the poor following enclosure was leased and the resultant rents

¹⁷⁸ Harris, 'Introduction', p. 3.

¹⁷⁹ Walter, 'Crown and Crowd', p. 237.

¹⁸⁰ Walter, 'Crown and Crowd', p. 237.

¹⁸¹ This is a general observation; there is no evidence of such concerns being raised at either Duffield or Whittlesey, perhaps because the commons in both places were extensive.

distributed according to the overseers' discretionary criteria for entitlement. These rarely equated to the benefits previously accruing from the commons.¹⁸²

It is frequently impossible to determine the reasons for particular riots. Whilst the cause of enclosure protest is clear, why riot occurred on some manors but not on others remains rather more obscure. The study of specific riots facilitates detailed consideration of their origins, which in turn may reveal much about the patterns of local social and political relations. Objectors to enclosure made recourse to custom: common rights in the enclosed land were frequently alleged to have existed from 'beyond the memory of man'. Protesters may have voiced their objections to the enclosure, but frequently they simply defiantly restated their rights, or, more frustratingly for the historian, the records or the perpetrators might remain silent even on this point. Similarly, although clergymen were often party to enclosure agreements because of their implications for increased tithes, unless explicitly stated, it would be erroneous to impute confessional motives to enclosure rioters.¹⁸³ It is also possible that on royal manors enclosure protests had religious undertones. Those who objected to the crown's religious policies might have seized the opportunity to articulate such grievances but since those accused of rioting rarely admitted their reasons, this suggestion is virtually impossible to prove.

¹⁸² This is discussed at length in Buchanan Sharp, 'Common rights, charities and the disorderly poor', in Geoff Eley and William Hunt (eds), *Reviving the English Revolution: Reflections and Elaborations on the Work of Christopher Hill* (London, 1988), pp. 107-37. See also, Hindle, *On the Parish?*, *passim*.

¹⁸³ There are some examples of enclosure riots motivated by religion. For example, in 1549 the rebels in 'Kett's Rebellion' took up the ideas the mid-sixteenth century 'Commonwealth Men', who, in their critiques of religious, social and economic policies, inveighed against the covetousness of enclosing landlords and the evil consequences of enclosure for the dispossessed. (McRae, *God Speed the Plough*, Chapter 1, 'Covetousness in the countryside: agrarian complaint and mid-Tudor reform' *passim*.) Similarly, during the Midland Revolt of 1607, some rioters took the opportunity to attack land enclosed by recusants, who, being outlawed, were disabled from bringing suits against the rioters, the lands of Thomas Tresham being targeted in particular. (Manning, *Village Revolts*, p. 120; Martin, *Feudalism to Capitalism*, pp. 182-84.) Keith Lindley has suggested that the involvement of the Levellers in fenland riots during the 1650s was encouraged by, and gave encouragement to, religious sectarians. (Lindley, *Fenland Riots*, pp. 194-95.)

Various studies have indicated that in some localities there was a 'tradition' of unrest: whereas protest was never recorded in some communities, others witnessed recurrent protests, separated by decades or even centuries.¹⁸⁴ Earlier confrontations were apparently retained in the collective popular memory, where they festered. In their study of the oral culture of various 'peasant' societies, Fentress and Wickham found that the most powerful element in social, that is, collective, memory was 'the memory of the community in opposition to the outside world'. They concluded that 'community defiance' was more likely to be remembered rather than 'less resonant and less unifying ... past events'.¹⁸⁵ Milan Kundera, discussing the political nature of memory, has noted that 'the struggle of man against power is the struggle of memory against forgetting'.¹⁸⁶ Proof of an oral history of protest may be found in depositions; even if there is no such proof, the suggestion of the existence of an oral history lingers.

viii. Into the local context

The importance of forest and fenland riots for our understanding of the impact of improvement on early modern society was highlighted by the studies by both Sharp and Lindley. As we have already noted, however, the wide-ranging and essentially

¹⁸⁴ Such recurrences can be tracked in Andrew Charlesworth, (ed.), *An Atlas of Rural Protest in Britain, 1548-1900* (London, 1983). Disputes over common rights in Ashdown Forest (Sussex) occurred during the seventeenth and nineteenth centuries. (L. Merricks, "'Without violence and by controlling the poorer sort": the enclosure of Ashdown Forest 1640-1693', *Sussex Archaeological Collections*, 132 (1994), pp. 115-28; B. Short, 'Conservation, class and custom: Lifespace and conflict in a nineteenth-century forest environment', *Rural History*, 10 (1999) pp. 127-54). Similarly, there seems to have been an enduring tradition of protest in Geddington (Northamptonshire). (Steve Hindle, "'Not by Bread Only"? Common Right, Parish Relief and Endowed Charity in a Forest Economy, c.1600-1800', in S. King and A. Tomkins (eds), *The Poor in England, 1700-1850: an Economy of Makeshifts* (Manchester, 2003), pp. 39-75; Neeson, *Commoners*, pp. 267-69.) At Berkhamsted, enclosure riots occurred in 1620, 1640 and in the 1860s. (Ben Cowell, 'The Commons Preservation Society and the Campaign for Berkhamsted Common, 1866-70', *Rural History*, 13 (2002), pp. 145-61; Falvey, 'Crown Policy and Local Economic Context'.)

¹⁸⁵ Fentress and Wickham, *Social Memory*, p. 114.

¹⁸⁶ M. Kundera, *The Book of Laughter and Forgetting* (1980), quoted in D. Levine and K. Wrightson, *The Making of an Industrial Society: Whickham 1560-1765* (Oxford, 1991), p. 428.

regional nature of their work meant that their conclusions regarding participation in riots were necessarily generalised; moreover, the fact that these conclusions were diametrically opposed effectively brought the subject to an interpretive stalemate. The recent studies by Hindle and Hipkin have demonstrated that such generalisations can be given greater specificity and precision by considering in detail enclosure riots that took place in particular localities, thereby providing a more nuanced reading of reactions to improvement. Continuing and developing their investigative method, this thesis puts under the microscope two particular communities, one forest and one fenland, and uses the experiences of their inhabitants to answer specific questions about the interface of custom, improvement, riot and politics.

As a whole, this thesis investigates six themes in the history of early modern social and economic relations. Four of these – the nature and significance of customary arrangements, which both grew out of and influenced the local economy and social structure; the impact of crown policy on local communities; the nature, course and consequence of opposition to crown policy; and the social profile of those to resisted improvement and of those who supported it – have previously been considered in some detail in existing studies of local communities. The remaining two – the aftershocks and outcomes of protest; and the political significance of resistance – are relatively unexplored themes.

Research for this thesis commenced in the archive of the House of Lords, specifically amongst the petitions presented by enclosing forest or fen landlords seeking injunctions against inhabitants and commoners who had attacked their property. Filed with such petitions might be associated documents, such as affidavits, interrogatories and depositions, as well as any subsequent orders issued by the Lords. Whilst it is possible to use almost any of the bundles of documents in that

archive to reconstruct a general outline of the riots that occurred in the community concerned, a detailed reconstruction of the background to those same riots can only be produced using information drawn from a variety of local records. Having identified in the Lords' archive several likely case-studies, it was, therefore, then necessary to ascertain whether it would be possible to place those particular riots within their local context. The riots at Duffield and Whittlesey were singled out because, although differing in nature and content, documents have survived in sufficient quantity to permit a detailed reconstruction of social and economic relations in the local community and to enable the execution of a prosopography of those involved, not only of the opponents but also of the supporters of enclosure. (See Map 1:1, overleaf, for the location of these two communities.) Since it was, to a certain extent, archival chance that dictated which two places would form the basis of this thesis, it is arguable that they have been brought together by coincidence. Nevertheless, we shall see not only that there were some very striking parallels between the two communities, but also that specific features of one or other of those communities indicate patterns of early modern social relations that can be glimpsed only rarely.

The large parish and manor of Duffield, situated in rolling hills just south of the Derbyshire Peak District, encompassed most of the ancient forest known as Duffield Frith, part of the duchy of Lancaster. Such regions were traditionally dependent on pastoral farming but mineral deposits and the continued existence of common fields meant that the local economy was rather more diverse. This was a community steeped in the customs of both forest and field, and inhabitants were belligerent in their efforts to protect their well-defined rights. Consequently, when

the Fifth, became a target of the thoroughly-studied 'Great' and 'Little' Domesday surveys.

Surveys were not prepared by royal writ: the grates listed were not royal property.

Especially the Domesday survey was a very important document.



Map 1:1. The locations of Duffield and Whittlesey

the Frith became a target of the financially-stretched Stuart administration, the commoners were not prepared to watch while the prime local asset was stripped.¹⁸⁷

Topographically Duffield's opposite, Whittlesey lay on an island in the fens to the east of Peterborough. Like forests, fenland communities were traditionally pastoral; unusually, however, Whittlesey also possessed extensive common fields. Its inhabitants, therefore, were used to communal regulation and customary practice in fens and fields alike. Early modern improvement writers and financial adventurers viewed undrained fens as unproductive and fenmen as slothful, whereas drained fens would be fruitful and require daily toil. In itself, drainage might benefit communities by protecting them from flooding but when coupled with enclosure, which parcelled up extensive common fens, it threatened to destroy the fenmen's traditional way of life.

In many respects, therefore, the communities of Duffield and Whittlesey were similar: their inhabitants enjoyed access to vast common resources that attracted the attention of outsiders desperate for profit. Their communal organisation and history were comparable; indeed, since Duffield was a duchy manor and the two Whittlesey manors were owned by monastic institutions prior to the Dissolution, and by absentees afterwards, tenants in both places were accustomed to distant, slack seigneurial administration. It is scarcely surprising, therefore, that when outsiders attempted to appropriate their jealously-guarded commons, and to impose order and authority on them, the inhabitants were not prepared to yield them up without a struggle.

Whilst it might be preferable to provide direct comparisons between Duffield and Whittlesey, and therefore to offer comparative discussions of their geography,

¹⁸⁷ For a summary of events in both communities, see Appendix 12, 'Duffield chronology' and Appendix 13, 'Whittlesey chronology'.

demography, customs and economy, the divergent nature of the available sources has militated against this. Although some of the extant archives for each *locale* are sufficiently similar in form and content to permit analogous modes of analysis, several important sources are either idiosyncratic or lacking altogether in one or other of the two places. It has therefore been decided to offer two parallel case-studies. The ordering of my thesis is such that I have endeavoured to enable the reader to appreciate the similarities and differences between the two communities before launching into the momentous events of the 1640s and their aftermaths.¹⁸⁸

The backgrounds to both communities are laid out, firstly to Duffield (Chapter 2) and then to Whittlesey (Chapter 3). These chapters, which outline the geography, demography and economy of the communities throughout the seventeenth century, include a reconstruction of landholding patterns. They also define the customs of the manors, analysing the ways in which they were preserved for, and transmitted to, succeeding generations, and, inadvertently, to present-day historians. These two chapters, therefore, characterise the communities upon which improvement was imposed. The next two chapters narrate and analyse the experiences of improvement and subsequent resistance at Duffield (Chapter 4) and Whittlesey (Chapter 5). The opening sections of each of these chapters provide a detailed discussion of the various improvement projects that were thrust upon those communities. Indeed, the analysis of the various royal projects that were attempted at Duffield in particular reconstruct several ways in which the cash-strapped Stuart administration might try to reap a fiscal harvest from crown estates. The ensuing narratives of the resistance to improvement that was offered by the inhabitants demonstrate that rioting might be a continuation of litigation by other means.

¹⁸⁸ Abrams defines an event as a 'moment of becoming at which action and structure meet'. Riot, a momentous event, provides a point of entry into an historical community. (Philip Abrams, *Historical Sociology* (Ithaca and Shepton Mallet, 1982), p. 192.)

Finally, using a variety of sources, many of the people who were accused of rioting are not only identified but also located within the local social hierarchy. Since the final sections of Chapters 4 and 5 discuss specifically the aftershocks of the riots, which reverberated until at least the 1670s at Duffield and into the 1700s at Whittlesey, the conclusion (Chapter 6) draws together the enduring political significance of the experience of improvement and resistance in the two places.

By delineating the local social structure of these two communities, it has been possible to see how their economic components were configured; how social alignments cut across them; and how political action grew out of them. I have therefore offered an historical sociology, linking ‘personal activity and experience on the one hand and social organisation on the other’.¹⁸⁹ It would have been desirable to offer a ‘thick description’ of protest, reconstructing the mentalities of the protagonists in rich detail. However, since there is only a limited amount of detailed depositional material relating to the events at Duffield and Whittlesey, a ‘thick description’, the aims of which should be to ‘draw large conclusions from small, but very densely textured facts’ has not been possible.¹⁹⁰ Instead, drawing strands of evidence from various archives, I have woven a braided narrative of the local history of resistance in two broadly comparable contexts.

The archives from which these strands were drawn are many and varied, comprising an extensive range of ecclesiastical, fiscal, manorial and seigneurial records. Some of the documents were generated locally: for example, ecclesiastical records such as parish registers, bishops’ transcripts, wills and probate inventories; or manorial records such as surveys, rentals, field books and court books. Other documents relating to the localities were generated by central government, such as

¹⁸⁹ Abrams, *Historical Sociology*, p. 16.

¹⁹⁰ C. Geertz, *The Interpretation of Cultures (Selected Essays)* (New York, 1973), Chapter 1, ‘Thick Description: Towards an Interpretive Theory of Culture’, quotation from p. 27.

taxation assessments, muster rolls and the records of the Royal Contract Estates; or by the courts of Exchequer, of Chancery and of the duchy of Lancaster. These court records include informations, answers, interrogatories, depositions, decrees and orders. When analysing these archives, it has been necessary to engage with, though not invariably to resolve, complex methodological debates about the interpretation of particular sources. In some instances, on the implications of the intricacies of the Hearth Tax, for example, or on the motivations for the rhetoric deployed in litigation, the perspectives offered here are both constructive and novel. In others, however, problems of interpretation have proved less tractable. One of the principal obstacles in the development of a prosopography of protest, for instance, is isonomy, especially the repetition of individual names in local landholding records. These methodological strengths and weaknesses are of considerable significance for students of local social and economic relations and are accordingly rehearsed in the appendices.¹⁹¹ But the two case-studies offered here are not merely inward-looking local studies of the politics of the parish. The involvement of the crown, as landowner at Duffield and as projector at Whittlesey, by definition adds a vertical political dimension. Indeed, it will become clear that the inhabitants were aware of the accessibility of the national political arena and of how participation within that arena might further their ends.

The contemporary rhetoric of improvement, much favoured by the crown, its surveyors and various projectors, paid little or no heed to local considerations. The anticipated increase in wealth that would accrue to the whole commonwealth fully justified the ensuing dislocation, both economic and social, of the local population.

¹⁹¹ Appendix 3, 'Using the Hearth Tax as an indicator of wealth' and Appendix 5, 'The problem of isonomy: the Whittlesey allotments'.

Similarly, by considering outbreaks of unrest that occurred over wide regions and long time-spans, much of the existing literature on enclosure riots has failed to explore the specific nature and significance of local custom and local politics. Hindle has suggested that historians of early modern political culture might profitably consider individual outbreaks of unrest because, unlike general studies, such detailed local studies disclose 'more subtle tensions and mutable social alignments within local society'.¹⁹² The following case-studies of the enclosure riots that occurred in two particular early modern communities, where inhabitants articulated local custom in defence of their way of life, provide precisely this kind of careful reconstruction not only of the local background to these events, that is, the political culture in which they occurred, but also of their outcomes. In addition, these two series of riots, although interesting in and of themselves, have wider implications for the study of both riot and popular politics because the involvement of the crown rendered each of these communities an interface between the politics of the parish and of the realm, and thus combine the characteristics of Collinson's newly defined 'political history'. *Pace* Harris, the riots at Duffield and Whittlesey are therefore transformed from mere episodes into social, economic and political dramas in their own right precisely because the script is read in a local context.¹⁹³

¹⁹² Hindle, 'Persuasion and Protest', p. 74.

¹⁹³ Harris, 'Introduction', p. 3: 'The problem that arose from focussing so heavily on riots and protest to gain an insight into the politics of those otherwise excluded from the political nation, however, was that it gave us an episodic history of popular politics.'

Chapter 2: Early modern Duffield: geography, demography and economy

As we have already seen, early modern improvement writers believed that land within the fenlands and royal forests was not exploited to its full potential. They argued that conversion to cultivation would not only render such land more productive, but also that such conversion would provide work for the seemingly idle inhabitants of those regions. Carried away by their own grand schemes, however, these writers frequently failed to realise that the land within these vast common wastes was not necessarily underused. They also ignored the fact that geology and topography, rather than the inhabitants themselves, determined the nature of the local economy. Some areas were unsuitable for improvement, no matter how much effort and money were invested in them. During the 1630s improvement was thrust upon the communities at Duffield and Whittlesey. Not surprisingly, many of the inhabitants reacted against it. In order to understand their reactions to the enclosure of their former commons, it is necessary to explore the nature of those communities both before and after the enclosures were constructed. The following two chapters, the first concerning Duffield and the second concerning Whittlesey, encompass not only the local economies, including occupations, landholding, customs and common rights, but also the demographic and social structures. The nature and survival rate of the various sources used to reconstruct these aspects of early modern communities have dictated the course that each exploration has taken.

i. The geography of Duffield

Situated in the east of Appletree Hundred, the parish of Duffield, within the deanery of Derby, lay on the cusp of fertile south Derbyshire and the barren Peak District.

Apart from the businesslike reports of various royal commissioners and some brief notes made by William Woolley, an early eighteenth-century Derbyshire antiquarian, there are virtually no contemporary descriptions of early modern Duffield and its environs.¹ Numerous accounts by seventeenth- and eighteenth-century visitors to Derbyshire describe the 'Wonders of the Peak', which lay to the north but, unlike its famous neighbour, Duffield Frith was apparently uninspiring to those who journeyed through the area.² Either anticipating forthcoming sights, or savouring past delights, nothing *there* was deemed noteworthy. So it is that, largely unexplored by travellers and historians alike, the vista of early modern Duffield is unrecorded.³

Linking two very different landscapes and covering approximately 16,000 acres, the topography of this large parish ranged from rolling hills to riverside plains. The main settlement, situated upon flat gravelly soil on the west bank of the Derwent, lay about four miles north of Derby, on the road to Chesterfield. According to Woolley, Duffield itself was 'a large and very good country town and the best in this part of the hundred'; there was 'good land on the lower parts of the Derwent and the River Ecclesburn which runs through it'.⁴ In contrast, Belper, the next largest settlement, three miles north of Duffield on the Derwent, had 'but bad and ancient forest land'. Hazelwood, in the south of the parish, contained 'some good land ... in

¹ The one principal exception will be discussed below. (Chapter 2, section ix, 'The preservation and transmission of custom'.) In about 1715 Woolley made notes for a topographical history of Derbyshire. His manuscript was not published during his lifetime but has been edited and published in Catherine Glover and Philip Riden (eds), *William Woolley's History of Derbyshire* (Derbyshire Record Society, 6, Chesterfield, 1981).

² For various accounts of the Peak District see, for example, Andy Wood, *The Politics of Social Conflict: The Peak Country 1520-1770* (Cambridge, 1999), 'Introduction, "Terms we did not understand": landscape, place and perceptions'.

³ The following account of the geography, geology, economy and demography of early modern Duffield has, of necessity, been constructed from various sources. W. Page (ed.), *The Victoria History of the Counties of England: Derbyshire* (London, 1905-07) comprises only two general volumes; volumes on individual parishes are currently 'in progress'. (C. Smith, 'Continuity and change: the future of the *Victoria History of the Counties of England*', *The Local Historian*, 32 (2002), pp. 84-89.) For an account of the Peak District during the same period, see Wood, *Politics of Social Conflict*.

⁴ Woolley's description of the Duffield area is in Glover and Riden (eds), *Woolley's History of Derbyshire*, pp. 89-93.

a pleasant valley'; whereas to the north, Postern and Shottle comprised 'mostly stony, indifferent land except here and there in the valley and by the rills thereof'.

Lying within and astride the boundaries of the parish were several manors, the most extensive being that of Duffield itself. As part of the duchy of Lancaster, a steward administered the manor of Duffield on behalf of the crown, reporting initially to duchy officials based at Tutbury Castle, Staffordshire, about twelve miles away.⁵ The manor was frequently referred to as 'Duffield *cum membris*', these members being the sub-manors of Belper, Biggin, Hazelwood, Heage, Holbrook, Hulland, Idridgehay, Makeney, Southwood, Turnditch and Windley.⁶ The villages and dispersed settlements that comprised the various sub-manors all bordered on, or lay within, the forest of Duffield Frith (see Map 2:1 overleaf).⁷

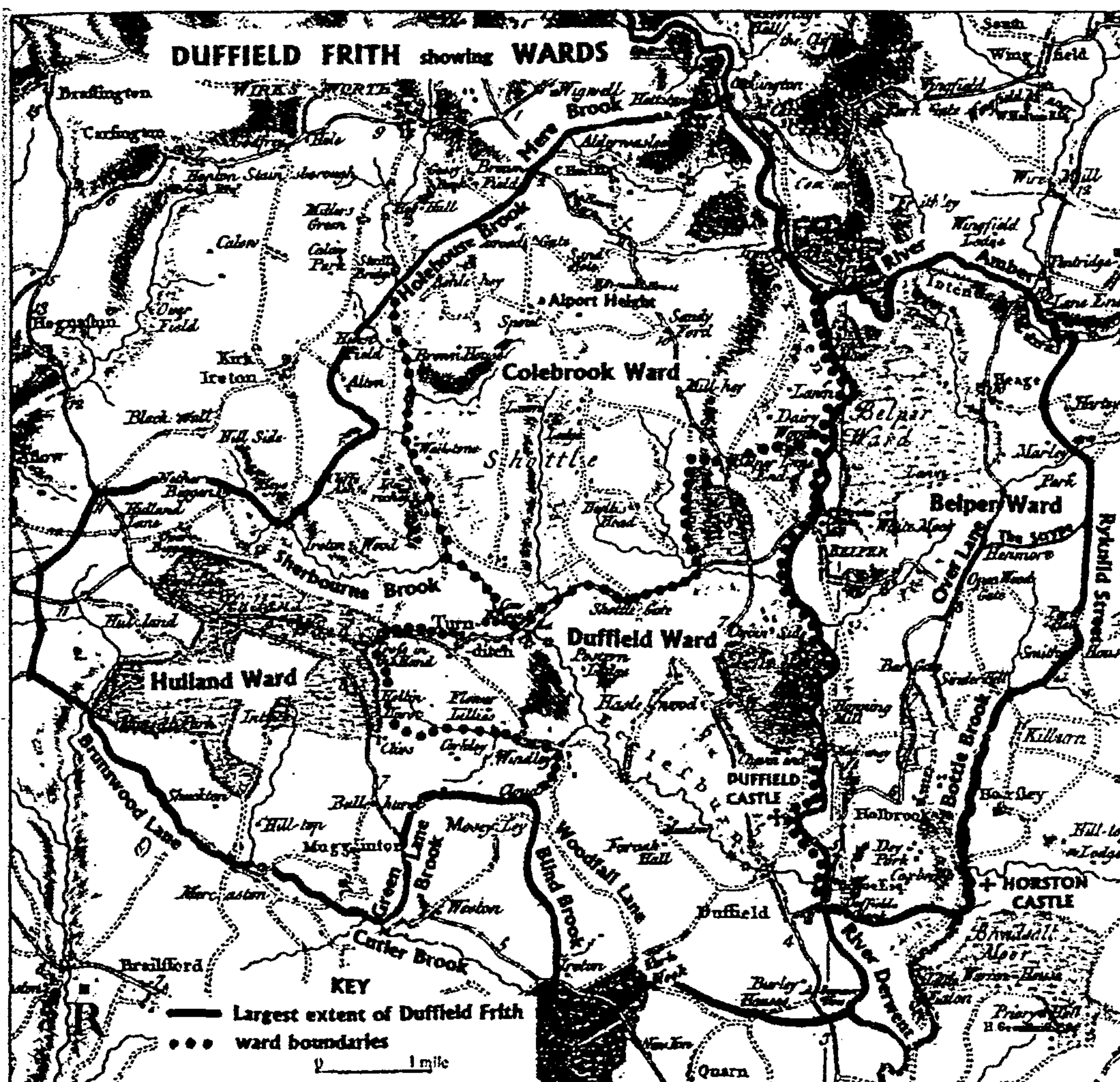
The Frith, although also part of the duchy, was managed separately from the manors. As a royal forest within the Honour of Tutbury, the Frith was regulated by a well-established body of forest law that was administered by various officials appointed by the duchy.⁸ Theoretically at least, manorial land – arable, pasture and meadow – was distinguished and distinguishable from forest land. The early modern Frith comprised three wards: Duffield (or Chevin), Belper (or Beaureper) and Hulland. Of these, Duffield and Belper wards were wholly in the parish of Duffield

⁵ Now held in the National Archives at Kew, the duchy's archive contains many manor court rolls and court books produced by Duffield's manorial officials from thirteenth to seventeenth centuries; those from the later period mostly record land transactions and reveal little of the administration of local by-laws and customs.

⁶ TNA: PRO: DL44/1147, 'An Account of the collection of copyhold fines within the manor', 23 June 1635. During the period under consideration the manor and its sub-manors were sold by the Crown. The sale is discussed in Chapter 4, part 1, section iii, 'The sale of the manor'.

⁷ For accounts of the history and management of Duffield Frith, see *VCH Derbys*, 1, pp. 413-21; G. Turbutt, *A History of Derbyshire*, 2 (Cardiff, 1999), pp. 585-95; J. C. Cox and F. Strutt, 'Duffield Forest in the Sixteenth Century', *DAJ*, 25 (June 1903), pp. 181-216.

⁸ For a description of the duties of some of these officials and names those in office in 1581, see TNA: PRO: DL44/305, f. 13, report of Edward Stanhope *et al.*, commissioners for the duchy of Lancaster, 23 February 1581. The most recent discussion of forest courts is to be found in Graham Jones, 'Swanimotes, woodmotes, and courts of "free miners"', in John Langton and Graham Jones (eds), *Forests and Chases of England and Wales c.1500-c.1850* (Oxford, 2005), pp. 41-48.



Map 2:1. The probable medieval boundaries of the wards of Duffield Frith
(from Wiltshire *et al.*, *Duffield Frith*, with permission)

but much of Hulland ward lay in Mugginton parish.⁹ The extent of the Frith can be suggested by combining the findings of two surveys.¹⁰ In 1560, its circumference measured approximately 30 miles and, in 1633, the areas of the three wards totalled 5,005 acres: Belper 1,846 acres, Chevin 1,248 acres and Hulland 1,911.¹¹

Although this study will focus on the effects on the local community of the enclosure of the Frith, it should be remembered that this was not simply a rural, farming economy. Just below the surface of Duffield's hills and valleys lay various mineral deposits including iron, stone, slate, coal and lead. Compared with elsewhere in England, the scale of mineral extraction and production in Duffield was modest; nevertheless it was an important source of supply for nascent industries in an area that has largely been overlooked by historians of Derbyshire, who have been distracted by the prominence of the lead industry in the Peak District.¹² There is, nonetheless, scattered evidence, both documentary and archaeological, for the extraction of iron ore and its smelting within the Frith.¹³ In the late sixteenth and early seventeenth centuries the earl of Shrewsbury maintained iron-works at Hopping

⁹ *VCH Derbys*, 1, p. 413. The medieval Frith had included a fourth ward, Colebrook ward, nearly all of which lay in Wirksworth parish. During the reign of Henry VIII it was granted to the Lowe family; thereafter it was a separate entity and is not included in this study. (*VCH Derbys*, 1, p. 418.) For a detailed study of the medieval Frith, see Mary Wiltshire, Sue Woore, Barry Crisp and Brian Rich, *Duffield Frith: History and Evolution of the Landscape of a Medieval Derbyshire Forest* (Ashbourne, 2005).

¹⁰ However, since the purpose of each commission differed, the measurements produced were not necessarily compatible. Most of the sixteenth-century surveys have been published in Cox and Strutt, 'Duffield Forest in the Sixteenth Century'. Seventeenth-century surveys include TNA: PRO: DL44/1117; DL44/1127; DL44/1142; DL44/1147; E317/Derb/18.

¹¹ Cox and Strutt, 'Duffield Forest in the Sixteenth Century', p. 189 (1560); TNA: PRO: DL44/1127 (September 1633).

¹² For the iron industry in forest areas, see, for example, H. Cleere and D. Crossley, *The Iron Industry of the Weald* (London, 1985); B. Sharp, *In Contempt of All Authority: Rural Artisans And Riot In The West of England, 1586-1660* (London, 1980). For early modern coal-mining, see J. Hatcher, *The History of the British Coal Industry, 1, Before 1700: Towards the Age of Coal* (Oxford, 1993); D. Levine and K. Wrightson, *The Making of an Industrial Society: Whickham, 1560-1765* (Oxford, 1991); Sharp, *In Contempt of All Authority*. For the lead industry in Derbyshire, see, for example, Wood, *Politics of Social Conflict*; David Kiernan, *The Derbyshire Lead Industry in the Sixteenth Century* (Derbyshire Record Society, 19, Chesterfield, 1989).

¹³ From the thirteenth century onwards there are frequent references to ironstone deposits and forges in the Belper and Duffield areas. (*VCH Derbys*, 2, pp. 356-59.) For a description of the conjunction of ironstone and coal deposits in Derbyshire, with particular reference to Duffield, see F. Nixon, *The Industrial Archaeology of Derbyshire* (Newton Abbot, 1969), p. 49.

Mill, north of Makeney.¹⁴ Fuel for the forge there, in the form of charcoal, was produced from trees felled in the Frith.¹⁵ Although some twenty miles distant from the metal-working region of Hallamshire, quantities of iron tools such as scythes were produced in the Duffield area.¹⁶ In 1581 Sir John Zouch of nearby Codnor set up a wire manufactory at a forge in Makeney.¹⁷ This particular branch of the industry was short-lived but wire-drawing was still being carried out in the parish in the 1630s.¹⁸ Another cottage industry producing iron goods was that of nailing, the materials for which were supplied by middle-men.¹⁹ In the eighteenth century, Belper became renowned for its nailing industry.²⁰

¹⁴ TNA: PRO: DL1/319, (unnumbered piece), bill of William Cavendish, earl of Newcastle *versus* Robert Treswell and Thomas Jaye, 23 June 1629; TNA: PRO: DL4/79/14, examination of Andrew Clayton, 24 September 1629. For details of the earl of Shrewsbury's ironworks in the manor of Sheffield, see G. I. H. Lloyd, *The Cutlery Trades: an Historical Essay in the Economics of Small-scale Production* (London, 1913), p. 68 and Appendix II, 'Steel making in Sheffield in the sixteenth century', extracts from the earl's steward's memorandum book.

¹⁵ The earl of Shrewsbury's purchase of timber in Frith for use in his iron forges is discussed in Chapter 4, part 1, section i, 'The sale of woods'. On the relationship between the iron industry, charcoal and woodland, see G. F. Hammersley, 'The Charcoal Iron Industry and Its Fuel', *Economic History Review*, 2nd series, 26 (1973), pp. 593-613.

¹⁶ The inventory of Richard Fletcher of Bradley Laund near Belper included '11 hundred and a half of rough sithes (scythes), £70'; '1 hundred of stringed sithes, £4'; '3 hundred of shearing hookes, £3 10s'; £10-worth of steel and two hundredweight of iron worth £1 10s. He owed Mr William Newton £25 12s for iron and £10 for the steel. Fletcher's occupation was given as 'yeoman' but although he possessed animals and grain valued at just over £111, he was clearly also a metalsmith. (LRO: B/C/11, will and inventory of Richard Fletcher, probate granted 19 October 1638.) Traditional methods for scythe-making are described in Lloyd, *Cutlery Trades*, p. 57. For metal-working in the Sheffield region, see D. Hey, *The Rural Metalworkers of the Sheffield Region: A Study of Rural Industry before the Industrial Revolution* (Leicester, 1972).

¹⁷ Nixon, *Industrial Archaeology of Derbyshire*, p. 51.

¹⁸ John Page was making fishing hooks and spectacles in his Duffield home in the 1630s. (LRO: B/C/11, will and inventory of John Page of Duffield, wire-drawer (probate granted 10 September 1640).)

¹⁹ In the 1640s the nailer William Bee owed money to 'Robert Storer for a bunch of iron, the one halfe was wrought upp and thother halfe unwrought' and 'Mr Smith for some iron'. (LRO: B/C/11, will of William Bee of Belper, nailer (probate granted 8 May 1649).) See also, for example, will and inventory of John Simes of Belper, nailer (probate granted 20 May 1673); will and inventory of George Storer of Bradley Laund (probate granted 25 January 1661). Storer's inventory makes no mention of any associated tools; Simes's inventory values bellows and tools in the smithy at £1. For processes in nail-production and the dual occupations of nailers in the Sheffield area, see Hey, *Rural Metalworkers of the Sheffield Region*, pp. 32-49.

²⁰ For Belper's nailing industry, see *VCH Derbys*, 2, p. 362.

Different types of stone and gravel were, and still are, quarried in various parts of the parish.²¹ Scythestones, used to sharpen scythes, were quarried from gritstone beds in several places to the north east of Derby, including Belper, Duffield, Heage and Holbrook.²² Several men in the parish were involved in this industry.²³ Coal-mines were situated in both Chevin and Belper wards.²⁴ It has been estimated that by 1610 each of these mines may have been producing more than 10,000 tons of coal *per annum*.²⁵ Commonwealth surveys made during the 1650s indicate that 'the mines, delfes or pitts of coal' in the manor of Duffield were by far the most valuable in Derbyshire at that time.²⁶

²¹ For example, TNA: PRO: E134/1659/East27, deposition of John Burgine of Shottle, waller, 28 March 1659: 'There was a free warren of Conies in Hulland Warde and Coale Mine and a quarry of Stone on Chevine warde and another Coale myne on Belper warde'.

²² Glover observed that 'The best scythe-stones are made at Hunger-Hill, Belper; Birchover, near Winster; Breadsall; Coxbench; Darley Moor; Duffield bank; Heage; Holbrook; Horsley; Little Eaton'. (Stephen Glover, *History of the County of Derby*, edited by Thomas Neale (2 volumes, Derby, 1829), 1, pp. 91-92.) Farey has provided a detailed description of how these stones were hewn and carefully spilt. (John Farey, *General View of the Agriculture and Minerals of Derbyshire* (London, 1811), p. 438.)

²³ Robert Turner of Holbrook, scythestone-maker, bequeathed his working tools to six named colleagues in 1664; Henry Parker of Makeney had 4,000 scythestones ready hewn 'att the quarree' when he died in 1666. (LRO: B/C/11, inventory of Robert Turner of Holbrook, scythestone-maker (probate granted 15 April 1664); inventory of Henry Parker of Makeney, scythestone-maker (probate granted 6 June 1666).) Another parishioner, William Johnson, also of Makeney, put such stones to use in his trade of scythe-grinding during the 1640s. (LRO: B/C/11, will and inventory of William Johnson of Makeney, scythe-grinder (probate granted 28 May 1647).) No tools relating to Johnson's trade are mentioned in either his will or inventory. Only his status ascription reveals that the farm that he bequeathed to his son Thomas was not his only source of income.

²⁴ TNA: PRO: E134/1659/East27. In 1659 several deponents described coal-mining in the Frith. Vicesimus Bradshaw stated that, following the enclosure of the Frith commoners claimed that the profits of these mines were theirs as they were situated in the two-thirds allotted to them. Thomas Allen, a collier in Chevin Ward, stated for about eight years the commoners employed several miners, who paid the commoners between 2s and 4s per week for the opportunity to extract coal. Presumably, the miners were then free to sell what they mined. (TNA: PRO: E134/1659/East27, deposition of Vicesimus Bradshaw of Makeney, gentleman, 28 March 1659, in answer to interrogatory 6 for the plaintiffs; deposition of Thomas Allen of Chevin Ward, collier, 28 March 1659, in answer to interrogatories 2, 6 and 10 for the plaintiffs.)

²⁵ Nixon, *Industrial Archaeology of Derbyshire*, p. 74, citing calculations by Dr J. U. Nef and a map based on them. This should be compared with the tentative estimates of annual coal-production from the Whickham coal-field in County Durham, which suggest an output of over 50,000 tons in the 1590s and over 100,000 tons by the 1630s. (Levine and Wrightson, *Making of an Industrial Society*, p. 30, n. 102, referring to the work of Dr. J. Hatcher.)

²⁶ *VCH Derbys*, 2, pp. 349-52 describes early coal-mining in the county. The analysis of the Derbyshire Commonwealth surveys is on p. 352. The original surveys of the Duffield mines are TNA: PRO: E317/Derb/16 and E317/Derb/18. William Woolley described the coal from Belper's mine as 'very ordinary': perhaps the seams had been mined out by the eighteenth century. (Glover and Riden (eds), *Woolley's History of Derbyshire*, p. 89)

Due to its situation just south of the main Derbyshire lead field and the ready availability of fuel and water-power, lead-smelting was also carried out in Duffield parish. In about 1552, on the river Derwent near Duffield, the German, Burchard Cranich, had erected an innovative water-powered stamp-mill and furnace for crushing and smelting lead ore but due to technical difficulties it was operational for only a few years.²⁷ The traditional method of smelting lead in a bole was being practised in Belper Ward End and at Ashleyhay, just north of Shottle, until at least the end of the sixteenth century.²⁸ In 1581, commissioners for the duchy reported on the feasibility of erecting two ‘bloweng mill[s] for the melting of lead ower’ in the Frith.²⁹

The evidence of mining, smelting, quarrying and manufacturing in the parish confirms that some inhabitants made at least part of their living by these means but whether these industries benefited the community in general is problematic since not only did the successive owners of the mineral rights rarely reinvest their profits

²⁷ This was the first application of the stamp mill in England. The lead probably came from the mines north of Duffield. Cranich left Derbyshire in 1554. (H. R. Schubert, ‘The First Stamp Mills in English Industry’, *Journal of the Iron and Steel Institute*, 157 (November 1947), pp. 343-44.) Depositions made in 1582 in a lawsuit concerning allegations of patent infringements describe Cranich’s stamp mill and the lead-smelting process in Duffield. (TNA: PRO: E134/24Eliz/Hil4; E134/24 Eliz/East16.) The original documents are now illegible but have been partially transcribed in Kiernan, *Derbyshire Lead Industry*, pp. 123-25. For an account of the lawsuit, see M. B. Donald, *Elizabethan Monopolies: the History of the Company of Mineral and Battery Works 1568-1604* (Edinburgh, 1961), Chapter 9, ‘Patent infringement allegations in lead manufacture in Derbyshire’.

²⁸ Kiernan, *Derbyshire Lead Industry*, map on p. 55. ‘Boles’ consisted of bonfires built into a three-sided structure, within which large amounts of lead ore were placed. This was a seasonal process: boles were sited at the tops of hills to catch the south-west winds of spring, so that the powerful winds would stoke the flames, thereby increasing the temperature to point at which the lead ore would melt. (Kiernan, *Derbyshire Lead Industry*, Chapter 2, ‘The Bole and the Brenners’.)

²⁹ TNA: PRO: DL44/305, f. 13, 23 February 1581. The plan to erect such blowing mills appears to have been an attempt to revive the methods used by Cranich thirty years earlier. The commissioners found heaps of old slag iron on both sites, suggesting that ironstone had been smelted there previously. Details of the plan to smelt lead in the Frith and how ore would be obtained from suppliers in neighbouring Wirksworth have survived. (TNA: PRO: DL44/305, f. 14, also dated 23 February 1581.) Evidence on the ground of early modern Duffield lead-workers, however, is virtually non-existent. Anthony Wright, miner, who died in 1669, may have been a lead-miner: in Derbyshire the term ‘miner’ usually applied to leadminers, coalminers were known as ‘colliers’. Also, he requested burial in Wirksworth churchyard and left small bequests to inhabitants there. (LRO: B/C/11, will and inventory of Anthony Wright of Shottle Park, miner (probate granted 23 November 1669).) For the differences between miners and colliers, see Wood, *Politics of Social Conflict*, p. 181.

locally, but also they put great pressure on the timber resources of the Frith.³⁰ In contrast, as we shall see, the benefits derived from the vast royal forest were numerous and widely enjoyed by the local population.

ii. The demography of Duffield

During the early seventeenth century, the assets of forest communities began to attract the attention of projectors. These outsiders envisioned vast tracts of underused land, which were ripe for improvement but currently populated by multitudes of the idle poor.³¹ The following analysis seeks to determine the size and relative wealth of the early modern population of Duffield and thus whether this generalisation about forest communities was applicable there.

The difficulties faced by the modern historian trying to reconstruct the size of Duffield's community are similar to those experienced by early modern tax assessors. A sizeable proportion of England's population lodged in the interstices of the figures produced by tax assessors because, intentionally or otherwise, people created space for themselves in which they could escape tithe or tax obligations.³² Furthermore, in forest areas such as Duffield, 'there was a continuous tendency for landless people to drift towards the woods and wastes and establish a toehold for themselves if they could, especially on the boundaries of parishes, townships or

³⁰ Ninety per cent of the 221 Duffield probate inventories value animals and/or grain. These include those of all the nailers and scythestone-makers mentioned above.

³¹ For contemporary views of forests and their idle inhabitants, see, for example, J. St John, *Observations on the Land Revenue* (London, 1787), Appendix I, 'Manwood's Project for improving the Land Revenue, by inclosing Wasts. For Sir Julius Caesar. 27th April 1609'; Appendix II, 'Norden's Project for the improving some of his Majesty's Forests, Parks, Chaces and Wastes, presented to Sir Julius Caesar'; Appendix III, [anon.], 'An Account of the benefits which would arise from the inclosing, and improving the Forests, Parks, and Chaces belonging to the Crown, not only to the publick in general, but to the respective claimants interested therein, as the same were set forth, and explained by the Ministers and Officers of his late Majesty King James the 1st, in their many attempts made to inclose the same'.

³² See, for example, various depositions in the dispute over tithes in Duffield parish in the 1740s between Peter Davenport and Reginald Lygon, where deponents denied tithe liability for lands in the Frith. (TNA: PRO: DL4/144/1742/1; TNA: PRO: E134/18Geo2/Mich1.) The documents have been summarised in BL: Add MS 6691, ff. 30r-40v.

tythings, where jurisdictions might be ill-defined or uncertain'.³³ Analyses of numerous returns, whether produced for taxation, military or ecclesiastical purposes, demonstrate that when the inhabitants of Duffield were enumerated, officials entrusted with the task, whether local men or outsiders, failed to visit every settlement within the locality and so recorded different combinations of inhabitants.³⁴ When attempting to estimate the early modern population of Duffield, therefore, the figures calculated from these sources are tentative at best, and, as we shall see, at worst downright misleading.

iii. Counting the parishioners of Duffield

By the early modern period, three chapelries at Belper, Turnditch and Heage had been formed within the parish of Duffield.³⁵ Records submitted to the Privy Council in 1563 counting numbers of households in every parish can be used to estimate the population at that time. Duffield's returns survive but none were made for extra-parochial liberties, which included Hulland ward. According to Riden, this omission would not skew the Duffield population figures too much since such areas were thinly populated.³⁶ This observation is, however, seriously flawed since these areas attracted migrants and squatters precisely *because* they were often outside

³³ Alan Everitt, 'Common Land', in Joan Thirsk (ed.), *The English Rural Landscape* (Oxford, 2000), p. 218.

³⁴ The 1638 Derbyshire militia list is particularly problematic. Logic dictates that virtually all 216 of the men who were identified as rioters in 1642 would have been included in this militia list. However, of these 216 men, 100 were not named in the militia lists for either Appletree Hundred or the Wapentake of Wirksworth. Of those 100 men, even the surnames of fifty-one of them did not occur in the lists from Appletree Hundred. (TNA: PRO: SP16/405, part 2, militia list for the county of Derby, December 1638.)

³⁵ For a summary of the sizes of Derbyshire parishes, see P. Riden, 'The population of Derbyshire in 1563', *DAJ*, 98 (1978), pp. 61-71. The actual acreage figures are: Duffield 10,032; Belper 2,700; Heage 2,278; and Turnditch 975. They are quoted by Riden, who took them from William White, *Derbyshire Directory* (1857). Here, 'Duffield' includes the communities of Hazelwood, Shottle, Windley and Holbrook.

³⁶ Riden, 'Population of Derbyshire in 1563', p. 61.

ecclesiastical and civil jurisdictions.³⁷ At this time, in terms of population, Duffield was one of the largest parishes in Derbyshire, with a total of 539 households within the parish, suggesting a population of between 2,400 and 2,700 (see Table 2:1).³⁸

Table 2:1. Population estimates for Duffield parish and chapelries, 1563-1676

Parish / chapelry	Households in 1563	Population in 1563	Communicants + others in 1676	Population in 1676
Duffield	353	c.1589 – 1765	1795 + 1+ 4	c. 2687 – 3000
Belper	102	c. 459 – 510		
Heage	54	c. 243 – 270		
Turnditch	30	c. 135 – 150		
Total	539	c. 2426 – 2695	1800	c. 2687 – 3000

Sources: Riden, ‘Population of Derbyshire’, pp. 63-64; J. C. Cox, ‘A religious census of Derbyshire, 1676’, *DAJ*, 7 (1885), pp. 31-36.

The next available ecclesiastical records those of the 1676 ‘Compton Census’, which counted communicants.³⁹ The figures for Duffield are: 1,795 conformists, one papist and four non-conformists, giving a total of 1,800, a suspiciously round number. From his statistical analysis comparing the Compton Census with Hearth Tax returns for Derbyshire, Edwards concluded that in 1676 the vicar of Duffield counted the total number of inhabitants rather than the number of communicants, that is, every man, woman and child, rather than only those aged 16

³⁷ As we have already noted, contemporary improvement literature constantly denounced the presence of the poor in forests and wastes. In fact, Hulland has been omitted from all of the following demographic calculations, not because of Riden’s comment but because, apart from Hearth Tax returns, few records relating to Hulland have survived

³⁸ The 1563 returns are tabulated and analysed in Riden, ‘Population of Derbyshire in 1563’, pp. 61-71. The originals are BL: Harleian MS 594, ff. 156-60. The population figure has been calculated using the multiplier of 4.5 to 5.0 suggested by Riden, ‘Population of Derbyshire in 1563’, p. 62.

³⁹ Unfortunately, the returns of the 1603 survey of communicants within the diocese of Lichfield have not survived. The returns of the whole of the Compton Census have been published in Anne Whiteman (ed.), *The Compton Census of 1676: A Critical Edition* (London, 1986). The Derbyshire returns were first published in J. C. Cox, ‘A religious census of Derbyshire, 1676’, *DAJ*, 7 (1885), pp. 31-36.

and over.⁴⁰ Such a conclusion, however, raises serious doubts about Edwards' methodology, since according to his analysis the population of this large forest parish nose-dived between 1563 and 1676 (see Table 2:1).⁴¹ More credible figures are produced by accepting 1,800 as the number of communicants, giving a total population of between 2,650 and 3,000.⁴² Even these figures suggest that the population there had increased by only about 11 per cent in 114 years; not quite the expansion that might be expected in a forest community.⁴³

Since we have already noted, however, that under-recording was a particular problem at Duffield, it is likely that the actual rate of increase was much higher; certainly figures for the country as a whole suggest that the population increased by some 64.1 per cent between 1563 and 1676.⁴⁴ Systematic aggregative analysis of the Duffield parish registers demonstrates that the population was indeed growing during the seventeenth century (see Figure 2:1, overleaf). There was, for instance, a surplus of 419 baptisms over burials (18 per cent) recorded between 1625 and 1680.⁴⁵ Mortality exceeded baptisms in much of the 1640s and 50s, but the surplus of

⁴⁰ D. G. Edwards, 'Population in Derbyshire in the reign of King Charles II: the use of hearth tax assessments and the Compton census', *DAJ*, 102 (1982), pp. 106-17. In his analysis, Edwards used the Hearth Tax assessments that he had previously published in D. G. Edwards (ed.), *Derbyshire Hearth Tax Assessments 1622-70* (Derbyshire Record Society, 7, Chesterfield, 1982). For the Duffield area he used the returns of Lady Day 1664.

⁴¹ Edwards assumed that the Compton Census figures for Duffield included those for its three chapelries; even if these figures actually referred to the main parish alone, his calculations would suggest that the population increase between 1563 and 1676 was only very slight.

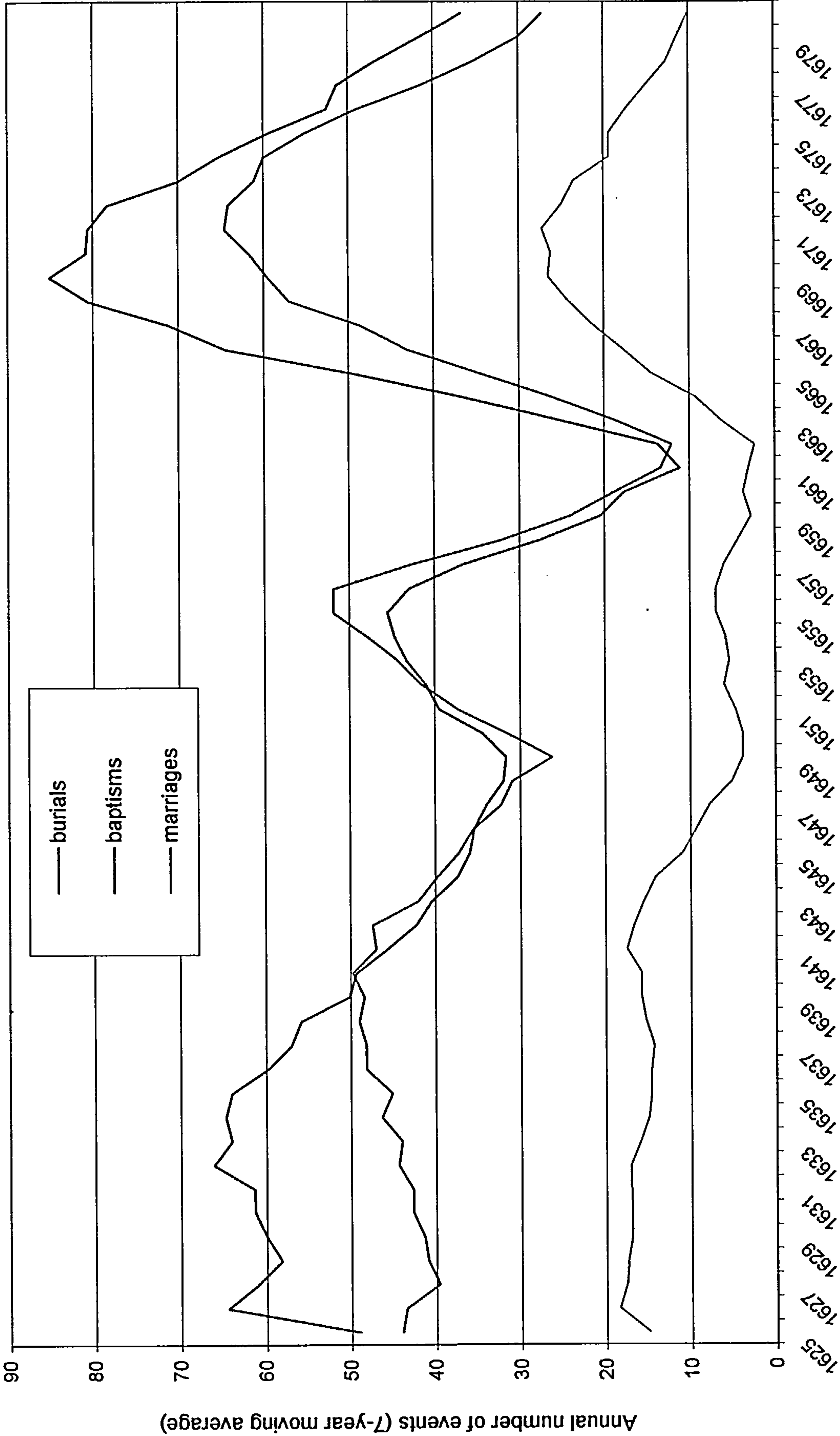
⁴² Arkell suggests that a broad range of 33 to 40 per cent would cover the likely proportion of children under 16 in most communities. (T. Arkell, 'A method for estimating population totals from the Compton census returns', in K. Schurer and T. Arkell (eds), *Surveying the People: The Interpretation and Use of Document Sources for the Study of Population in the Later Seventeenth Century* (Oxford, 1992), pp. 101-02.)

⁴³ For a comparison with forest populations in Northamptonshire, see below. (Chapter 2, section iv, 'The taxable population of the townships'.)

⁴⁴ Using back projection, Wrigley and Schofield suggested that between 1563 and 1676, the total population grew from 3,048,188 to 5,003,488, an increase of about 64.1 per cent. (E. A. Wrigley and R. S. Schofield, *The Population History of England 1541-1871: A reconstruction* (London, 1981), p.207, figure 7.1; pp. 531-32, Table A3.3.)

⁴⁵ DRO: D2402 A/PI 1/1 (1598-1656); D2402 A/PI 1/2 (1657-1676); D2402 A/PI 1/3 (1676-1700). The registers of the parish of St Alkmund, Duffield, commence in 1598. Entries for the years 1625 to 1680 have been counted to give a picture of the parish from before the enclosures until after they were re-established in modified form.

Figure 2:1. Vital events in Duffield parish, 1625 to 1680



Year (corrected to commence on 1 January)
Note: 1656-57, 1660-62, 1670, 1674, 1676, 1679 & 1680 are incomplete; 1658 & 1659 are missing.

baptisms over burials was especially large in the 1630s and in the early 1660s. It is likely that data from the years missing in the registers would increase the surplus.⁴⁶

iv. The taxable population of the townships

The survival of taxation returns from Duffield enables the production of a second set of population estimates, albeit of the *taxable* rather than the *total* population.⁴⁷ These taxable population estimates serve both as demographic indicators in their own right and also as comparators to test the validity of the estimated increase in the total population suggested above. Whilst, due to differences in jurisdictional boundaries, it is not feasible to compare population figures based on ecclesiastical returns from a parish directly with those derived from taxation returns made by township or constablewick, it is reasonable to compare trends suggested by both sets of data.

Analysis of several taxation assessments for Duffield suggested that the most suitable returns for calculating the taxable population are those of the first payment of the 1543 Lay Subsidy and the Michaelmas 1662 Hearth Tax assessment (see Table 2:2, overleaf, and Appendix 2, 'Estimating the taxable population of Duffield').⁴⁸ In 1543 there were 174 taxpayers, giving a taxable population of approximately 780.⁴⁹

⁴⁶ Gaps in the registers, particularly the absence of any entries in 1658 and 1659, have caused misleading dips in the trends. (The entries for 1656-57, 1660-62, 1670, 1674, 1676, 1679 and 1680 are incomplete; those for 1658 and 1659 are missing.) Also, on average, three unbaptised children were buried every year, thus distorting the true baptism to burial ratio. In some years between 1625 and 1639 separate entries were made for baptisms that took place in the chapels at Belper, Heage and Turnditch; in the remaining years the entries were incorporated with those for Duffield.

⁴⁷ The taxable population comprises taxpayers and their families. The size of the total taxable population is estimated by multiplying the number of inhabitants assessed for taxation purposes by a particular number calculated to allow for the number of people in their households. The proportion of householders that fell below the tax threshold in any given tax assessment would not be excluded from any parish 'census'; thus the taxable population would be smaller than the total population.

⁴⁸ TNA: PRO: E179/91/152, first assessment of the 1543 Lay Subsidy for Appletree Hundred, made in November 1543; TNA: PRO: E179/245/8, 1662 Michaelmas Hearth Tax assessment, Appletree Hundred.

⁴⁹ The subsidy was levied on males aged 16 and over; a multiplier of 4.5 allows for women, children under 16 and possible omissions. Professor Nigel Goose originally supplied this multiplier in private correspondence. Since then, however, in print he has suggested a multiplier of 3.2 for lay subsidy returns. This would suggest a lower total population in 1543 and therefore an even more marked

Table 2:2.
The taxable population of Duffield in the returns for the Lay Subsidies of 1525 and 1543 and the Hearth Taxes of 1662M and 1664L

Place	Total taxpayers in 1525 ¹	Total taxpayers in 1543 ²	Taxable population in 1543 ³	Total chargeable taxpayers in 1664 ⁴	Total taxpayers in 1662 ⁵	Taxable population in 1662 ⁶
Belper	31	37	167	75	81	348
Duffield	34	50	225	72	71	305
Makeney	7	11	50	(with Duffield)	(with Duffield)	
Hazelwood & Shottle		40	180			
Hazelwood	12					
Turnditch	9	(with Duffield)				
Windley	9	2	9			
Hazelwood, Windley & Turnditch				(missing)	55	237
Heage	(missing)	24	108	47	54	232
Holbrook	16	10	45	19	22	95
Postern & Shottle				c.92	102	437
Total	118	174	784	c.305	385	1656

¹ TNA: PRO: E179/91/95 & 92/176, second assessment of the 1523 Lay Subsidy for Appletree Hundred, made in February 1525.

² TNA: PRO: E179/91/152, first assessment of the 1543 Lay Subsidy for Appletree Hundred, made in November 1543.

³ Using multiplier of 4.5, as suggested by Nigel Goose, in private correspondence.

⁴ TNA: PRO: E179/94/405, 1664 Lady Day Hearth Tax assessment, Appletree Hundred.

⁵ TNA: PRO: E179/245/8, 1662 Michaelmas Hearth Tax assessment, Appletree Hundred.

⁶ Using mean household size of 4.3. (T. Arkell, ‘A method for estimating population totals from the Compton census returns’, in K. Schurer and T. Arkell (eds), *Surveying the People: The Interpretation and Use of Document Sources for the Study of Population in the Later Seventeenth Century* (Oxford, 1992), pp. 101-02.)

In 1662, the number of taxpayers had risen to 385, thus the taxable population was approximately 1660.⁵⁰ Superficially these estimates suggest that the taxable population of Duffield more than doubled between 1543 and 1662. Given the problems encountered by officials assessing the dispersed settlements that comprised the community of 'Duffield', estimates of such a dramatic rise should be qualified; nevertheless this analysis does suggest that the taxable population had increased markedly in the intervening 120 years.⁵¹ These findings concerning a forest population chime with Pettit's analysis of the populations of the villages within Salcey and Whittlewood Forests. Comparing figures derived 1524 Lay Subsidy returns and 1670 Hearth Tax assessments, he found, for example, that the median average number of householders in villages in those forests rose from thirty-four to seventy-seven.⁵²

Regarding Duffield's total population in the 1660s, a more accurate estimate may be obtained by conflating the Michaelmas 1662 (1662M) and Lady Day 1664 (1664L) assessments, since the latter includes those householders exempted from the Hearth Tax (see Table 2:3, overleaf).⁵³ This conflation suggests approximate minimum and maximum populations for the Duffield area in the early 1660s of 2,370 and 2,680 respectively. Indeed, it is likely that the number of householders present in the Duffield area was even higher because it is probable that some people living in

increase between 1543 and 1662. (Nigel Goose and Andrew Hinde, 'Estimating local population sizes at fixed points in time: Part I – General principles', *Local Population Studies*, 77 (2006), pp. 66-74.)

⁵⁰ Referring to the Hearth Tax, Tom Arkell suggests mean household size of 4.3 in both rural and urban areas outside London. (Arkell, 'A method for estimating population totals', pp. 101-02.)

⁵¹ Using back projection, Wrigley and Schofield suggested that between 1543 and 1662, the total population grew from 2,829,024 to 5,116,266, an increase of about 65 per cent. (Wrigley and Schofield, *Population History of England*, p. 207, figure 7.1; pp. 531-32, Table A3.3.)

⁵² P. A. J. Pettit, *The Royal Forests of Northamptonshire: A Study in their Economy 1558-1714* (Northamptonshire Record Society, 23, Gateshead, 1968), pp. 141-45, especially Table XX on p. 144. and Appendix IV, 'Relative Population Studies', pp. 197-99.

⁵³ The 1664L returns supply the number of households dwelling in properties exempted from the tax and the 1662M returns supply some of the missing 1664L data.

Table 2:3. A comparison and analysis of the Michaelmas 1662 and Lady Day 1664 Hearth Tax returns for the Duffield area

	A ¹	B ²	C ³	D ⁴	E ⁵	F ⁶	G ⁷	H ⁸	I
Place	Both	Same surname	1662M only	1664L only	Illegible in 1664	Minimum taxpayers	Maximum taxpayers	Minimum taxable population	Maximum taxable population
Belper	44	4	33	37	17	118	135	507	581
Duffield	56	3	12	61	2	132	134	568	576
Hazelwood, Windley & Turnditch	0	0	55	0	0	55	55	237	237
Heage	32	1	21	19	4	73	77	314	331
Holbrook	20	0	2	15	0	37	37	159	159
Postern & Shottle	39	5	58	35	50	137	187	589	804
Totals	191	13	181	167	73	552	625	2374	2688

¹ Number of taxpayers appearing in both the 1662M and 1664L assessments.

² Number of taxpayers not present in 1662M but appearing in 1664L with the same surname as someone present in 1662M but absent from 1664L. (Four were widows.)

³ Number of taxpayers only appearing in 1662M (and not included in column B).

⁴ Number of taxpayers only appearing in 1664L (and not included in column B).

⁵ Number of names illegible in 1664L.

⁶ Minimum total number of taxpayers: A+B+C+D. This assumes that *all* of the names illegible in 1664L appear in 1662M.

⁷ Maximum total number of taxpayers: A+B+C+D+E. This assumes that *none* of the names illegible in 1664L names appear in 1662M.

⁸ Using mean household size of 4.3. (Arkell, ‘A method for estimating population totals from the Compton census returns’, pp. 101-02.)

the Frith were not even listed as exempted tax-payers. Apart from the possibility that such people's houses were inadvertently omitted by tax-assessors due to their inaccessible location, squatters' cottages might have no hearth or chimney that could be assessed, just a crude fire, the smoke from which escaped through a hole in the roof.⁵⁴ It is tempting to compare the figures derived from the Hearth Tax assessments relating to the various settlements around and within the Frith with the parish's estimated population of 2,650 to 3,000, based on the returns of the Compton Census. Although it must be emphasised that one set of figures refers to fiscal units and the other to ecclesiastical, most of the households that were counted would have been the same, suggesting that there were indeed nearly 3,000 people living in the area in the third quarter of the seventeenth century.

v. Contemporary perceptions of demographic pressure in Duffield

Evidence for the rate of demographic change in the Duffield area is not consistent: between 1563 and 1675 the ecclesiastical population apparently grew by some 11 per cent, whereas between 1543 and 1662 the taxable population grew by as much as 100 per cent (see Tables 2:1 and 2:2). The estimated increase in parishioners does, however, seem somewhat conservative, particularly since evasion was less likely to be motivated by ecclesiastical than by fiscal concerns. Anecdotal evidence supplied by contemporaries, moreover, indicates that they themselves were conscious of a rapidly expanding population.⁵⁵

⁵⁴ *Ex info.* Margaret Spufford, in discussion at the conference 'Vernacular Buildings and the Hearth Tax', held at Rewley House, Oxford, 29-31 October 2004. Such omissions are also suggested in G. E. Fussell, *The English Rural Labourer: his home, furniture, clothing and food from Tudor to Victorian times* (London, 1949), pp. 10,12.

⁵⁵ Compare this with the concerns voiced in various Hertfordshire parishes in the late sixteenth and early seventeenth centuries about incomers in general and newly erected cottages in particular. (Steve Hindle, 'Exclusion Crises: Poverty, Migration and Parochial Responsibility in English Rural Communities, c.1560-1660', *Rural History*, 7 (1996), pp. 130-31.) Similar concerns were voiced by the better sort of Brigstock in Geddington Chase (Northamptonshire). (Steve Hindle, ' "Not by Bread

As early as 1588, Anthony Bradshaw, deputy steward of the Frith, observed that Duffield Frith was ‘overcharged’: its commons and the readily available fuel supply were attracting more incomers than they could sustain adequately.⁵⁶ In 1618, it was reported that the number of households in Postern and Shottle, two neighbouring communities within the Frith, had increased from nine in 1580 to some sixty-six in 1618. Nearly all of these households were so successfully engaged in ‘husbandry’ that they were selling corn on the market and maintaining ‘great families’.⁵⁷ In 1641, Robert Smith, a Duffield weaver, identified forty-one encroachments that had been made in the Frith anything up to thirty years previously.⁵⁸ Finally, in the Commonwealth survey of Duffield Frith, made in 1650, commissioners valued 129 illegal dwellings and encroachments in the Frith.⁵⁹ Like Smith’s deposition in 1641, the commissioners’ survey recognised the existence of squatters and incomers in the manor.⁶⁰ These two records, highlighting the presence

Only”? Common Right, Parish Relief and Endowed Charity in a Forest Economy, c.1600-1800’, in S. King and A. Thomkins (eds), *The Poor in England, 1700-1850: an economy of makeshifts* (Manchester, 2003), pp. 39-75.)

⁵⁶ DRO: D2402 A/PZ 2/1, George Bradshaw’s book on customs and liberties 1792 (unpaginated), ‘A Friends due comendacion of Duffeld Frith’, stanza 36. (See Appendix 1.) This long poem, written by Bradshaw, is discussed in Chapter 2, section ix, ‘The preservation and transmission of custom’. In his study of riots in the west of England between 1586 and 1660, Buchanan Sharp does not attempt to quantify forest populations but relies on anecdotal evidence to demonstrate that such populations were expanding throughout the period. See, for example, the discussion of Blackmore Forest (Wiltshire) and the Forest of Dean (Gloucestershire). (Sharp, *In Contempt of All Authority*, pp. 163, 181-83.)

⁵⁷ This report is taken from Wood, *Politics of Social Conflict*, p. 94. Unfortunately none of the references in the footnote to the relevant paragraph actually relate to Postern and Shottle, nor was Dr Wood able to provide any further information. A trawl through various possible sources in the National Archives proved fruitless.

⁵⁸ Smith’s deposition was made during the course of an action in the Duchy Court. He was responding to interrogatory 5, which included the following questions: ‘What incroachmentes hath the sayd Challoner (one of the defendants) made upon the sayd Mannour of Duffield or upon the wastes thereof? What & how many Inmates hath hee erected within the Townshipp of Duffield aforesayd? And what other incroachmentes have beene made upon the demesnes or wastes of the sayd Mannour? And when & by whom?’ (TNA: PRO: DL4/99/10, interrogatories and depositions on behalf of Sir Edward Leech, depositions taken 23 September 1641.)

⁵⁹ TNA: PRO: E317/Derb/18, ‘A Survey of the Royaltie of the late disforrested Forrest or Chase called Duffield Frith lyeing & being in the Hundred of Appletree in the Countie of Derby’, 19 August 1650. TNA: PRO: DL32/4 reproduces the text of the survey *verbatim*.

⁶⁰ The commissioners’ list adds to as well as complements that of Smith. It provides the names of a maximum of 122 more encroachers: seven of the encroachers were mentioned in both 1641 and 1650. Not all of the encroachments discovered by the commissioners had been made by mere squatters,

of encroachments on the waste, serve as reminders of the magnetic qualities of such expanses of land, contradicting Riden's contention that such areas were sparsely populated. Similarly, all of this anecdotal evidence confirms the impression that the population of this forest community, like others elsewhere in the country, was increasing rapidly, Edwards' demographic analysis of the parish notwithstanding.⁶¹

vi. The social structure of Duffield: hearths as an indicator of wealth

Having established that Duffield's population was indeed growing, we now need to test the conventional assumption that the inhabitants of early modern forests such as this were poor and marginal.⁶² By equating social status with the number of hearths in an individual's house, various historians have used Hearth Tax returns to construct socio-structural models of early modern communities (see Appendix 3, 'Using the Hearth Tax as an indicator of wealth' and also Table 2:4 overleaf).⁶³ Husbands has noted, however, that it should not be assumed that the number of hearths in an individual's home necessarily indicated the level of their wealth.⁶⁴ In addition to wealth, other factors, such as regional building styles, the age of the dwelling, the availability of land, and local fuel types, influenced the number of hearths in an early

some contained substantial buildings. Indeed eighty-three of the encroachments were valued at between 2s and 8s *per annum* and six were valued from 10s to 40s.

⁶¹ For expanding forest populations elsewhere in the country, see, for example, Pettit, *Royal Forests of Northamptonshire*, pp. 141-45; Sharp, *In Contempt of All Authority*, pp. 163, 181-83.

⁶² Norden considered forests to be 'verye nurseries of Idlenes Atheisme Beggerie [and] perfidiousnes'. (John Norden, 'To the Righte Honorable the Lorde Highe Treasurer of Englande. A Proiecte towching the improving of some of his Maiesties forestes Parkes Chaces wastes &c', (undated but before 24 May 1612), Cecil Papers, Hatfield House, Herts., 132, no. 145.) This paper is similar to the project that Norden sent to Sir Julius Caesar at about the same time. This latter project has been printed as Appendix II in St John, *Observations on the Land Revenue*.

⁶³ See for example: R. Fieldhouse, 'The Hearth Tax and Social Structure in the Borough of Richmond in 1673', *Cleveland and Teesside Local History Society Bulletin*, 14 (1971), pp. 9-17; K. Wrightson and D. Levine, *Poverty and Piety in an English village: Terling, 1525-1700* (Oxford, 1979); Wood, *Politics of Social Conflict*; T. C. Wales, 'Poverty, poor relief and the life-cycle: some evidence from seventeenth-century Norfolk', in R. M. Smith (ed.), *Land, kinship and lifecycle* (Cambridge, 1984), pp. 351-404.

⁶⁴ Chris Husbands, 'Hearths, wealth and occupations: an exploration of the Hearth tax in the later seventeenth century', in Schurer and Arkell (eds), *Surveying the People*, p. 65.

Table 2:4. Summary of models for categorising Hearth Tax returns and the returns for the Duffield area

Author	Place	Categories				
		6-20 hearths	3-5 hearths	2 hearths	1 hearth & 'excused' (i.e. exempt)	
Wrightson & Levine ¹	Terling (Essex)	gentry & very large farmers	yeomen, wealthy craftsmen	husbandmen, craftsmen	labourers, poor craftsmen, poor widows	1h: 22 (18.0%) n/c: 40 (32.8%)
		10 (8.2%)	29 (23.8%)	21 (17.2%)	62 (50.8%)	
			4+ hearths	2-3 hearths	1 hearth	1 hearth exempt
Skipp ²	Forest of Arden (Warwickshire)	n/a	included 1 knight & 10 gentlemen	substantial or middling peasants	lesser husbandmen; smallholders; small craftsmen; labourers	'vast majority of them ... landless cottagers'
		[total] 475	31 (6.5%)	85 (17.9%)	170 (35.8%)	189 (39.8%)
		[total]	4+ hearths	2-3 hearths	1 hearth	1 hearth exempt
[Duffield area]	Belper	102	0 (0%)	7 (6.9%)	68 (66.7%)	27 (26.5%)
	Duffield	122	10 (8.2%)	16 (13.1%)	46 (37.7%)	50 (41.0%)
1664L ³	Heage	55	2 (3.6%)	4 (7.3%)	41 (74.5%)	8 (14.6%)
	Holbrook	35	0 (0%)	4 (11.4%)	15 (42.9%)	16 (45.7%)
	Shottle/Postern	c.129	0 (0%)	4 (3.1%)	c.88 (68.2%)	37 (28.7%)
	[total]	c.443	12 (2.7%)	35 (7.9%)	c.258 (58.2%)	138 (31.2%)

¹ Keith Wrightson & David Levine, *Poverty and Piety in an English village: Terling, 1525-1700* (Oxford, 1979), p. 35.

² Victor Skipp, *Crisis and Development: An Ecological Case Study of the Forest of Arden 1570-1674* (Cambridge, 1978), p. 78.

³ TNA: PRO: E179/94/405, Lady Day 1664 Hearth Tax returns for Appletree Hundred.

modern home.⁶⁵ Heeding these qualifiers, the following analysis uses Hearth Tax returns for Duffield to produce a tentative reconstruction of the social structure of the community in the 1660s. Firstly, it applies models that categorise the wealth of communities according to the number of hearths assessed to the Duffield returns; secondly, it considers the correlation of hearths, house size, wealth and social standing in Duffield using probate inventories of known taxpayers.

In his work on mining communities in the Derbyshire Peak District, Andy Wood used the Hearth Tax to analyse the population of the Peak townships in two ways: firstly, to calculate the number and percentage of 'poor' householders in each community and, secondly, to compare the relative poverty of those communities.⁶⁶ Using the model devised by Wrightson and Levine, Wood combined the numbers of people occupying exempted properties with those charged on one hearth and proceeded to demonstrate that many lead-mining communities were 'locked in poverty'. Since the parish of Duffield lay on the southern border of the Peak District it seemed feasible to apply Wood's methodology to the Duffield Hearth Tax assessments. When the numbers of exempt and one-hearth chargeable properties in the 1664L returns for the Duffield area are amalgamated, a similar picture of 'deepest poverty' emerges (see Table 2:5 overleaf). In Belper, 93.1 per cent of householders were exempt or paid only on one hearth. The equivalent figures elsewhere were: 78.7 per cent at Duffield; 89.1 per cent at Heage; 88.6 per cent at Holbrook; and 96.9 per cent at Postern and Shottle. Given that this was a forest area,

⁶⁵ For studies of housing styles in various counties and regions, see the contributions in P. S. Barnwell and Malcolm Airs (eds), *Houses and the Hearth Tax: the later Stuart house and society* (CBA Research Report 150, York, 2006). Until very recently, the relationship between local vernacular architecture and the number of hearths in a house had rarely been considered; most historians seem to have assumed that wealth alone dictated house-size.

⁶⁶ Wood, *Politics of Social Conflict*, pp. 89-93; A. Wood, 'Industrial development, social change and popular politics in the mining area of north west Derbyshire c.1600-1700' (unpublished University of Cambridge PhD thesis, 1994), pp. 83-88. Wood based his model of the Hearth Tax on that devised by Wrightson and Levine. (Wrightson and Levine, *Poverty and Piety*, pp. 34-36.)

Table 2:5. Summary of chargeable and non-chargeable taxpayers in the Lady Day 1664 Hearth Tax returns for the Duffield area

Chargeable (c)															Non-chargeable (n/c)			Pop ¹
Place	House-holds (c + n/c)	1c	1c as % of all households	2c	3c	4c	5+c	Total chargeable hearths	Total chargeable taxpayers	Total n/c	n/c as % of c + n/c	Total 1c + n/c	1c + n/c as % of total entries					
Belper	102	68	66.7%	6	1	0	0	85	75	27	26.5%	95	93.1%	437				
Duffield ²	122	46	37.7%	13	3	6	4	129	72	50	41.0%	96	78.7%	525				
Heage	55	41	74.5%	4	0	1	1	60	47	8	14.6%	49	89.1%	237				
Holbrook	35	15	42.9%	4	0	0	0	23	19	16	45.7%	31	88.6%	151				
Postern & Shottle	c.129	c.88	68.2%	4	0	0	0	³ c.99	c.92	37	28.7%	c.125	96.9%	c.555				
Total	c.443	c.258	58.2%	31	4	7	5	c.396	c.305	138	31.2%	c.396	89.4%	c.1905				

Source: TNA: PRO: E179/94/405

¹ Using multiplier of 4.3. (Arkell, 'A method for estimating population totals from the Compton census returns' in Schurer and Arkell (eds), *Surveying the People*, p. 98.)

² Edwards assumed that the 1664L returns for Duffield included the hearths in Hazelwood, Turnditch and Windley. Comparison with the 1662M returns demonstrates that these three settlements were not assessed in 1664. (Hearth Tax assessments, Michaelmas 1662 (TNA: PRO: E179/94/378, mm.59-63 & E179/245/8); Edwards, *Derbyshire Hearth Tax Assessments*, p. lxix.)

³ The figure is damaged but ends in 9.

which had been enclosed thirty years previously and in which many squatters' cottages had recently been erected, such a profile of 'poverty' appears feasible.

When these figures are divided into their component parts of 'exempt' and 'one-hearth chargeable', however, a quite different profile emerges. In Belper, Heage, Shottle and Postern more than two-thirds of all properties were *taxed* on one-hearth; the proportion of exempt properties exceeded 40 per cent only at Duffield and Holbrook, and in Heage they comprised less than 15 per cent. Furthermore, at Duffield over 21 per cent of the total housing stock had two or more hearths. The area was not *necessarily* 'locked in poverty'.⁶⁷ It is, therefore, misleading to suggest that an accurate picture of a community's poverty may be drawn from the Hearth Tax by merging the number of exempted properties with one-hearth-chargeable houses: this simply provides the total number of one-hearth houses in that community's housing stock.⁶⁸

A more accurate economic profile of a community is achieved in studies of social structure that distinguish between those exempted from the Hearth Tax and those charged on one hearth. In his work on four neighbouring townships within the Forest of Arden (Warwickshire), Victor Skipp acknowledged that there was a clear distinction between one-hearth houses that were chargeable and those that were exempted. He devised categories accordingly, the last being 'one-hearth-exempt

⁶⁷ In fact, when Wood's figures are scrutinised, it seems that the amalgamation of exempt and chargeable single-hearth houses also provides a somewhat misleading view of poverty in some of those communities. For example, he states that at Sheldon fifty-one of fifty-three householders (96.2 per cent) had only one hearth; thirty-eight of thirty-nine (97.4 per cent) at Wardlow and twenty-six of thirty (86.7 per cent) at Overhaddon. The numbers of exempt were actually twenty-seven, four and four respectively. For the table showing 'Distribution of Hearths in the Mining Townships 1664' see Wood, 'Industrial development', p. 84, Figure 2.8.

⁶⁸ Wood himself admitted that 'there are certain difficulties with this form of classification, in particular the placement of single-hearth charge payers with those who were exempted'. He had noticed that 'within the mining communities of north west Derbyshire, as with other industrial areas, real distinctions existed between exempted households and those paying the tax upon a single hearth' but yet failed to make that distinction in his study. (Wood, 'Industrial development', pp. 69, 83.)

householders'.⁶⁹ Given that Skipp's model was based on a forest community, it has been applied here to the 1664L returns for the Duffield area and the resultant figures have been compared with those from the Forest of Arden (see Table 2:4).⁷⁰ With approximately 40 per cent of householders assessed on a non-chargeable hearth, 37 per cent on one hearth, 13 per cent on two or three and 8 per cent on four or more, the taxation profile of the township of Duffield itself bears a striking resemblance to that of Skipp's communities, suggesting that the two areas had a similar social structure. However, this correlation should not be over-emphasised because when the returns from Belper, Heage, Holbrook, Postern and Shottle are combined with those of Duffield itself a very different picture emerges. Of the Derbyshire householders, 58.2 per cent were taxed on one hearth, as opposed to 35.8 per cent in the Forest of Arden; exemptions were 31 per cent and nearly 40 per cent respectively; and approximately 10 per cent were assessed on two or more hearths against approximately 24 per cent. The difference in the highest category probably resulted from the fact that the Forest of Arden was divided into many relatively small manors, most of which had local resident landlords who lived in houses with four or more hearths, unlike Duffield where the absentee lord of the manor, Sir William Leech, resided in Westerham (Kent).⁷¹ These two forest areas, with similar numbers of people assessed, clearly had different social profiles

⁶⁹ Victor Skipp, *Crisis and Development: An Ecological Case Study of the Forest of Arden 1570-1674* (Cambridge, 1978), p. 78.

⁷⁰ Unfortunately it has not been possible to compare the social profile of the Duffield area with those of the communities caught up in the risings in several forests in the West Country studied by Buchanan Sharp: the terminal date of his work is 1660. (Sharp, *In Contempt of All Authority*.) It is tempting to speculate that he too would have merged exempted taxpayers with those assessed on one hearth to show that his 'rural artisans' inhabited communities that were 'locked in poverty'.

⁷¹ For the distribution of manors in the Forest of Arden, see Skipp, *Crisis and Development*, p. 8. For Leech's landholding in the Duffield area, see TNA: PRO: PROB11/344/17v-18v, will of Sir William Leech of Squerryes, Kent (probate granted 3 July 1674). In 1664, Leech's property in Westerham was assessed on twenty-two hearths. (Duncan Harrington (ed.), *Kent Hearth Tax Assessments Lady Day 1664* (British Record Society, Hearth Tax Series, 2; Kent Archaeological Society, 29, Rochampton, 2000), p. 58.)

As Wrightson and Levine's work on Whickham (County Durham) has demonstrated, probate inventories can be used to test the socio-economic profile suggested by Hearth Tax assessments of a particular community.⁷² The survival of twenty-nine Duffield taxpayers' inventories drawn up between 1662 and 1668 allows such an evaluation.⁷³ Due to limitations of space, we will briefly only consider the twenty inventories of people assessed at 'one-hearth chargeable' in the 1662M returns (see Appendix 4, 'Duffield Hearth Tax inventories'). It has been suggested that taxpayers charged on one hearth might be 'lesser husbandmen, smallholders, small craftsmen and labourers'.⁷⁴ Given that the ascription 'lesser husbandman' is somewhat vague, it is necessary to suggest a level of inventoried wealth for such a person. The ranges of total wealth in the inventories of Duffield husbandmen and yeomen are set out in Table 2:6 overleaf. As the mean and median values of the husbandmen's inventories are fairly close, it is reasonable to suggest that in Duffield parish the 'average' total wealth of a husbandman was about £55. Since the mean value of the lower quartile is £16 5s 9d, arguably the value of a *lesser* husbandman's total wealth at Duffield was about £16.

⁷² Levine and Wrightson, *Making of an Industrial Society*, pp. 155-72.

⁷³ A period of six years and under was considered an acceptable time gap between the Hearth Tax assessments and the valuations of a taxpayer's wealth. These twenty-nine inventories are summarised in Appendix 4. In total, seventy-four inventories of Duffield parishioners who were assessed in the Michaelmas 1662 and/or Lady Day 1664 Hearth Tax returns have survived from the period 1662 to 1680 but forty-five of them were made after 1668. For the purposes of this analysis, the total wealth of the deceased has been equated with the total value of their inventory. Other than Robert Turner's non-chargeable assessment in 1664L, all assessments used here are those in the 1662M returns because those for 1664L do not contain assessments for Hazelwood, Postern, Shottle, Turnditch or Windley and of the twenty-nine inventories studied here nine of the deceased lived in those places and eight died before the 1664L returns were made. (See Table 2:2 for a summary of the 1662M returns.)

⁷⁴ Skipp, *Crisis and Development*, p. 78.

Table 2:6. Total wealth of Duffield husbandmen and yeomen, 1625-1680⁷⁵

	Husbandmen	Yeomen
number	48	50
median value	£54 2s 0d ⁷⁶	£102 6s 4d ⁷⁷
mean value	£58 12s 0d	£143 16s 9d
highest value	£177 1s 0d (Thomas Bradshaw) ⁷⁸	£727 7s 10d (Lancelot Brett) ⁷⁹
lowest value	£6 18s 4d (George Smith) ⁸⁰	£2 0s 0d (Henry Wollott) ⁸¹

Source: LRO: B/C/11, Duffield inventories, 1625-1680.

The total wealth of the twenty one-hearth taxpayers ranged from £4 13s 6d (James Holland) to £727 7s 10d (Lancelot Brett). Whilst Holland, who was a labourer, fits neatly into the one-hearth categories in Table 2:4, Brett, a yeoman with debts of £550 owing to him, most certainly does not. Indeed, the stated occupations of all twenty varied considerably: a carrier, three husbandmen, a labourer, a mason, a scythestone-maker, a tailor, a webster (weaver), a widow and five yeomen. The total wealth of only three men, the webster William Poyser (£15 4s 8d), the husbandman Anthony Higgatt (£17 12s 0d) and James Holland, falls below or near the suggested value for a ‘poor husbandman’. Moreover, the total wealth of seven men exceeds the median value for Duffield husbandmen.⁸² Indeed, the total wealth of John Moore

⁷⁵ Only inventories of men *explicitly* described as ‘husbandman’ and ‘yeoman’ have been included.
⁷⁶ Calculated from the mean value of the inventories of Richard Alton of Shottle Park, husbandman (£53 5s 0d) (probate granted 22 September 1670) and of Thomas Spendlove of Shottle Park, husbandman (£54 19s 0d) (probate granted 3 October 1670).
⁷⁷ Calculated from the mean value of the inventories of William Lees of Makeney, yeoman (£100 0s 0d) (probate 10 March 1665) and of John Lichfield of Heage, yeoman (£104 12s 8d) (probate granted 22 January 1665).
⁷⁸ LRO: B/C/11, inventory of Thomas Bradshaw of Belper, husbandman (probate granted 17 January 1640).
⁷⁹ LRO: B/C/11, inventory of Lancelot Brett of Wiverslough near Belper, yeoman (probate granted sometime in 1663).
⁸⁰ LRO: B/C/11, inventory of George Smith of Belper, husbandman (probate granted 12 June 1628).
⁸¹ LRO: B/C/11, inventory of Henry Wollott of Hazelwood, yeoman (probate granted 19 October 1638). Wollott was not a typical yeoman: his will shows that he was a young, unmarried man from a ‘yeoman family’ who had died before being able to establish himself.
⁸² The seven were John Eyley, William Thacker, Simon Simpson, Thomas Richardson, Thomas Gratton, John Moore and Lancelot Brett.

(£158 15s 6d) and of Brett far exceed the median value for yeomen, and yet their homes were only assessed on one hearth.⁸³

Of course, the significance of these twenty inventories must not be over-emphasised since they represent less than 7 per cent of the 305 one-hearth-chargeable taxpayers listed in the 1662M returns. Although some others may have enjoyed similar wealth, most of the remaining 285 one-hearth taxpayers probably *were* relatively poor, living as they did in a forest area, where, as we have already seen, numerous encroachments had been made.⁸⁴ Indeed, in general, an inventory was only taken if the moveable goods belonging to the deceased were valued at over £5 and many inhabitants of one-hearth houses probably did not possess such ‘wealth’.⁸⁵ Certainly fourteen of them had their assessment reduced from one-hearth-chargeable in 1662M to non-chargeable in 1664L.⁸⁶ Nevertheless, we now know that in 1662 one of the seventy-two one-hearth-chargeable houses in Belper was inhabited by Lancelot Brett, a yeoman, whose inventory had the highest value of all 221 Duffield inventories. We also know that the total wealth of Thomas Goodwin and Judith Downes, the inhabitants of two other one-hearth houses in Belper, was

⁸³ Brett’s one-hearth house had at least eight rooms including ‘the servants chamber’. The well-equipped hearth on which the property was assessed was in the ‘housebody’, a well-furnished room containing many pieces of furniture, pewter and brass. Food and drink were prepared and stored in the nether house and dairy; the parlour and two of the three chambers were used as bedrooms; the bakehouse, or backhouse, was for general storage, possibly detached from the main building. This was evidently a large one-hearth house, the owner of which was definitely not poor. (LRO: B/C/11, inventory of Lancelot Brett of Wiverslough near Belper, yeoman (probate sometime in 1663).)

⁸⁴ These twenty people were only selected for study because they happened to die within six years of the assessments being made. Other taxpayers may have been as wealthy at the time of the Hearth Tax but died later. It should also be noted that not all those who made encroachments were necessarily poor. In 1650, Henry Gregson, gentleman was reported for building a stable and barn in an encroachment in Hulland Ward; similarly ‘Mr Smith’ had encroached a house and barn in Belper Ward. (TNA: PRO: E317/Derb/18.) When she made an encroachment in Chevin Ward, Judith Downes, widow, may well have been poor but in 1662 and 1664 her property, situated in the township of Belper, was assessed as one-hearth-chargeable; her inventory, made on 29 December 1668, was valued at £45 9s 0d. (TNA: PRO: E317/Derb/18; TNA: PRO: E179/245/8; TNA: PRO: E179/94/405; LRO: B/C/11, inventory of Judith Downes of Belper, widow (appraised 29 December 1668).)

⁸⁵ For discussions of various aspects of the probate process and extracts from relevant statutes, see the contributions in Tom Arkell, Nesta Evans and Nigel Goose (eds), *When Death Do Us Part: Understanding and Interpreting the Probate Records of Early Modern England* (Oxford, 2000).

⁸⁶ Calculated by comparing the entries in the two sets of returns.

valued at over £30.⁸⁷ Even this brief analysis, therefore, confirms that hearth numbers were not necessarily dictated by the householder's individual wealth.

Hearth numbers might, for instance, have been dictated by the particular type of fuel used in the community. Coal, widely available in Duffield, did not burn successfully in the wide hearths and chimneys that were constructed for burning wood. Ideally, a smaller hearth and more efficient chimney were needed but the problem could be alleviated by the use of a brazier, which required no flue, or of a grate. If a grate were used for burning coal, the existing hearth might not need to be modified and so the whole endeavour of extending or altering the property might be avoided.⁸⁸ At least seven Duffield inventories specifically mention fire-grates and one lists a coal rack. The householders concerned were a gentleman, three yeomen, a carrier, a tailor, a nailer and a widow. Since these people were spread throughout Duffield's social spectrum, it follows that improved methods for burning coal were available to all levels of society there.⁸⁹ This being the case, it is arguable that houses in Duffield of any size, belonging to people of any social status, might have fewer hearths than equivalent houses had in areas where wood was still the predominant fuel.

To a casual researcher ransacking Hearth Tax assessments for proof of early modern rural poverty and proletarianisation, the stark profile of the social structure of this forest area, where almost 90 per cent of the population dwelt in houses with only

⁸⁷ Similarly in Shottle and Postern, although ninety-one out of 102 houses only had one hearth, the inhabitants of ten of these one-hearth houses possessed total wealth valued between £15 4s 8d and £132 3s 0d.

⁸⁸ Hatcher, *History of the British Coal Industry*, 1, pp. 412-13.

⁸⁹ The seven inventories are those of William Cockerham of Walton, yeoman (probate granted 6 May 1634); Exuperius Bradshaw of Duffield, gentleman (probate granted 4 November 1636); George Storer of Bradley Laund, nailer (probate granted 25 January 1661); Joan Toplis of Hazelwood, widow (probate granted 4 October 1661); Thomas Chatborne of Duffield, tailor (probate granted 22 October 1661); Simon Simpson of Holbrook, carrier (probate granted 9 September 1662); William Lees of Makeney, yeoman (probate granted 10 March 1665); Peter Page of Duffield, yeoman (probate granted 1 March 1666).

one hearth, would appear to further their argument. Although life-cycle poverty was present in Duffield, as in any other rural community, isolation of the various components of the Hearth Tax assessments reveals a less impoverished society than recent commentators have suggested.⁹⁰ Similarly, whilst in general the householder of a one-hearth-chargeable dwelling might be expected to be poor, they were not necessarily so since research shows that the number of hearths within a property was also affected by local fuel resources and building styles.⁹¹ Although taxpayers such as Lancelot Brett, who do not fit the convenient template, distort the smooth outline, nonetheless they draw attention to differences that could so easily be overlooked and are indeed tempting to ignore.

We have now established that during the seventeenth century there was a sizeable, growing population in the townships in and around the Frith and that, contrary to popular perceptions of forest communities, Duffield was not an impoverished community, although some of its households were indeed poor. This being the case, we now need to consider the nature of the local economy that sustained the population. Firstly we will consider landholding patterns, entitlements to common rights and their composition, and then we will turn to the ways in which inhabitants made their living from the Frith and the surrounding land.

⁹⁰ The Duffield findings suggest that had Wood separated exempt from one-hearth chargeable assessments he might have had to conclude that the Peak mining communities were not as polarised and poverty-stricken as he believed. Similarly, a study of probate inventories from the Peak District, conspicuous by its absence from his account, would have shed more light on the wealth and housing conditions of various named taxpayers.

⁹¹ Sarah Pearson has found that in Kent 'the occupiers of older buildings were slow to upgrade them, whilst new ideas about what constituted an acceptable level of heating meant that newly erected buildings were far better equipped. The result was an uneven equation between hearths and wealth.' (Sarah Pearson, 'The Kent Hearth Tax records: context and analysis', in Harrington (ed.), *Kent Hearth Tax Assessments*, p. ci.) She has also suggested that the advent of the Hearth Tax may have even inhibited the building of additional fireplaces in existing houses. (*ibid.*, p. cii.)

vii. Landholding and commonable property

A survey of the manor of 'Duffield Frith' produced in 1634 by commissioners for the duchy records holdings in ten of the settlements within the manor, although it excludes holdings in Belper, the second largest settlement.⁹² Internal evidence suggests that the survey describes manorial holdings as they were in 1625, rather than in 1634, but it does, nevertheless, provide a snapshot of landholding in Duffield less than ten years before enclosure.⁹³ The survey lists 264 holdings in the manor, thirty-nine (14.7 per cent) of which were freehold and, of the remaining 225 customary holdings, 155 (58.7 per cent) were copyhold and seventy (26.5 per cent) bondhold.⁹⁴ The majority of copyhold tenancies were copyhold by inheritance.⁹⁵ By the time of the survey, however, the inheritance system was apparently beginning to

⁹² TNA: PRO: DL44/1142. The bundle includes the commission, dated 23 July 1634, and 'a True and perfect Survey of his Maiesties Mannor of Duffield Frith in the Countie of Derby with partes and members thereof, belonging to his highness Honor of Tutbury'. In fact, the manor of 'Duffield Frith' did not exist; the main manor was that of Duffield, which had various sub-manors; Duffield Frith, a royal forest, was a separate entity from the various manors. The survey was produced as part of the duchy's attempt to collect unpaid entry fines that had been respited since the 1610s. The matter is discussed in detail in Chapter 4, part 1, section ii, 'Composition for fines and the sale of copyholds'. The settlements or sub-manors included in the survey were: Duffield itself, Biggin, Hazelwood, Heage, Holbrook, Hulland, Idridgehay, Makeney, Southwood, Turnditch and Windley. There is no indication why Belper was omitted.

⁹³ For example, William Stables alias Baker, who was listed as holding freehold and copyhold land, died in October 1625. (LRO: B/C/11, will and inventory of William Stables alias Baker of Windley (probate granted 20 October 1625).) In any case, the manor of Duffield *cum membris* was one of the 'Royal Contract Estates' that was sold to the Corporation of London in 1628. (BL: Add MS 6691, ff. 100-106, transcript of an exemplification of letters patent granting the 'Manors of Duffield, Beaureper, Holebrooke, Southwood, Highedge, Edrichey, Hulland and Bigginge &c.' to the Corporation of London's trustees. Note that Belper is included here.) Frustratingly, this survey does not record the landholding of the earl of Newcastle, a significant opponent of the enclosures. From later documents it is clear that he had holdings in Windley and Duffield but these are not included any of the lists of tenancies; he was also the tenant of Mansell Park but the name of the park's tenant was left blank in the survey.

⁹⁴ By this time freeholdings ranged in size from three-quarters of an acre to 100 acres; copyholdings from one rood to seventy-nine acres one rood; and bondholdings from one and a quarter acres to seventy-nine. (TNA: PRO: DL44/1142.)

⁹⁵ Usually the son of a tenant would be admitted to a holding after the death of his father. Some Duffield tenants, to ensure that their lands passed to their children, surrendered their holding into the hands of the lord of the manor 'to the use of my last will and testament', enabling them to bequeath the holding as they wished, subject to the legatee paying the customary entry fine. See, for example, LRO: B/C/11, will of John Bland of Heage (probate granted 8 May 1635). The will of Francis Hudson of Postern Lodge, Duffield, demonstrates that this was still being practised at the end of the seventeenth century. (LRO: B/C/11, will of Francis Hudson, probate granted 23 April 1686).

break down and some tenures were now, for example, copyhold for lives.⁹⁶ Bondholdings, commonly known as 'Reeve's Things', were originally large units comprising 'a mese [messuage] A yardland & a meadow' and had many concomitant duties imposed by custom.⁹⁷ Previously there had been a fixed number of bondhold tenants within the manor, all of whom dwelt on their standard-sized holding. Again, by the time of the survey, some bondholdings had been broken up. These portions of bondholdings, however, had not been converted to leasehold but remained customary tenancies.⁹⁸

As the country's largest landowner with thousands of customary tenants, one of the problems facing the crown was the falling value of rents. Both Frederick Dietz and Richard Hoyle have drawn attention to surveys of crown lands made in 1608 and 1609 that highlighted the vast gap between actual rent and potential

⁹⁶ In 1635, when duchy commissioners were attempting to collect unpaid entry fines, the records show that some tenants had recently acquired copyhold land by various means other than by inheritance: for example, some tenancies had become copyholds for lives; others had been surrendered on a mortgage or upon a recovery. (TNA: PRO: DL44/1147, 'Account of the collection of copyhold fines within the manor'; the commission was dated 23 June 1635.) For a detailed discussion of early modern land tenure, see, for example, R. W. Hoyle, 'Tenure and the Land Market in Early Modern England: Or a Late Contribution to the Brenner Debate', *Economic History Review*, 2nd series, 43 (1990), pp. 1-20.

⁹⁷ Bondhold tenants held the manorial office of reeve annually in rotation, the duties of which included collecting rents, fines, amercements and heriots, presenting encroachments and inmates, and drawing up accounts. The following year they became the 'halfeswayne', whose duties included proclaiming when manorial courts would be held and summoning juries and tenants to appear at the courts. In 1641 there was an on-going dispute between several of the bondhold tenants and Sir Edward Leech, lord of the manor of Duffield, which provides much information about 'Reeve's things'. (TNA: PRO: DL4/98/29, Thomas Challenor *et al.* v Sir Edward Leech, 17 February 1641; TNA: PRO: DL4/99/10, Sir Edward Leech v Thomas Challenor *et al.*, 24 July 1641) Kerridge does not mention bondhold land in his general discussion of the various types of customary tenures in England; nor does he draw attention to it when he considers some 'peculiar customary tenures'. (E. Kerridge, *Agrarian Problems in the Sixteenth century and After* (London, 1969), Chapter 2, 'Tenures and Estates'.)

⁹⁸ In 1641 deponents variously stated that there fifteen and seventeen bondholdings in the manor. By this time several bondholders were absentees and Thomas Challenor allegedly held six 'Reeves things', farming some of the land himself and subletting the rest to several tenants, some of whom had subdivided the houses. (TNA: PRO: DL4/99/10, depositions of Richard Stewardson of Duffield, labourer; Henry Robinson of Duffield, labourer; Robert Smith of Duffield, weaver, all dated 23 September 1641.)

value.⁹⁹ The Duffield survey, taken in 1634, enables comparison with these earlier surveys of royal manors.¹⁰⁰ According to the surveyors, the manor's lands had increased in value almost ten-fold since the annual rents had been set originally.¹⁰¹ Moreover, when compared with the estimated improved values of holdings on other crown manors, it can be seen that land in Duffield was previously heavily undervalued and that it was currently worth considerably more than land in counties further north.¹⁰²

The land associated with the 264 holdings in Duffield covered approximately 3,400 acres: 500 acres of freehold land and 2,900 acres of copyhold. Manorial land comprised arable, pasture and meadow but it is impossible to calculate the total area of each type from the 1634 survey.¹⁰³ The survey valued pasture there from 3s to 5s per acre; arable was worth 4s to 5s per acre; and meadow, always the most valuable

⁹⁹ F. C. Dietz, *English Public Finance 1485-1641*, 2, 1558-1641 (London, 1964), p. 298, n. 15; R. W. Hoyle, "Shearing the hog": the reform of the estates, c.1598-1640', in R. W. Hoyle (ed.), *The Estates of the English Crown, 1558-1640* (Cambridge, 1992), pp. 204-05.

¹⁰⁰ Such calculations can be made because the commissioners ascertained the values of the entry fine and annual rent for each holding; in so doing they estimated the *current* value of the tenants' holdings and so were able to calculate the *improved* annual value of the manor's customary land. However it is not at all clear why, in 1634, the duchy's commissioners decided to calculate the improved value of the manors at Duffield since they had been sold in 1628.

¹⁰¹ There is no way of knowing when the rents were set. The figures in the survey are: total rents paid/stated £76 14s 6¾d; land currently actually worth £756 10s 3d *per annum*. Thus the improvement was £679 15s 8¼d (883 per cent). (TNA: PRO: DL44/1142.) As well as two copies of this survey, which is arranged by type of holding (copyhold and then bondhold in the main manors; copyhold and then bondhold in the members), the commissioners' papers contain a rental arranged by place. The rents given in the survey and rental differ although the tenants are the same. The former states that total annual rent paid for copyhold land was £76 14s 6¾d and the latter £133 10s 10½d. Both give the same improved value. In the rental the improvement is (wrongly) given as £541 6s 10d; it should read £622 19s 4 ½d.

¹⁰² For example, the improved annual value as a percentage of the ancient rent in Carmarthen and Pembroke was 189 per cent; in the North and East Riding 248 per cent; in the West Riding 290 per cent; in the Cumberland area 321 per cent; in the West Country 1382 per cent; in Somerset 1754 per cent. (Calculated from figures in Dietz, *English Public Finance*, 2, p. 298; Hoyle, "Shearing the hog", p. 205) The original surveys are in BL: Lansdowne MS 169. The crown was not, however, in a position to increase rents accordingly for its customary lands in Duffield because, quite apart from opposition from tenants well-versed in custom, in 1628 the manor had already been sold, via the Corporation of London, to Sir Edward Leech. For the sale of the manor, see Chapter 4, part 1, section iii, 'The sale of the manor'.

¹⁰³ For many of the tenants, their acreage of meadow and/or pasture and/or arable land was given as one figure with one valuation; a few had the acreages listed separately with a single valuation; even fewer tenants had holdings comprising only meadow or arable or pasture. It is this last group of holdings that provides details of the value per acre that commissioners were applying to the other holdings.

land, was worth 12s to 13s 4d per acre.¹⁰⁴ Comparison with rents charged on manors elsewhere in England during the seventeenth century indicates that the valuations made by the Duffield surveyors were in line with current market rates.¹⁰⁵

The 1634 surveyors measured and valued some tenants' arable and pasture together but that of some others separately; perhaps the latter were easily distinguishable pieces of land, such as closes. Certainly entries in the manor court books, bequests in wills and details concerning unpaid fines show that although a common field system still operated in Duffield, many closes also existed, suggesting that by this time piecemeal enclosure by agreement was occurring within the manor.¹⁰⁶ The survey indicates that prior to enclosure the area of pasture within the manor was greater than that under cultivation, not least because some of the land was unsuitable for agriculture.¹⁰⁷

¹⁰⁴ These were valuations of copyhold and bondhold land; the commissioners did not value freehold land in the manor. It is clear from the survey that values varied according to the nature of the terrain, rather than the type of holding.

¹⁰⁵ Kerridge calculated that customary rents on the Herbert estates in Wiltshire were about 4s 10d per acre from 1610-1619 and about 4s per acre between 1620 and 1629. (E. Kerridge, 'The movement of rent, 1540-1640', *Economic History Review*, 2nd series, 6 (1953), p. 24.) Campbell showed that arable land in Norfolk and Suffolk had increased in value from 1s 8d per acre in the 1590s to 10s an acre in the mid-seventeenth century, pasture from 4s 6d to 12s, and meadow from 4s 6d to 11s 8d. (Mildred Campbell, *The English Yeoman under Elizabeth and the Early Stuarts* (Yale, 1942), pp. 84-85.) Allen found the following freehold rents per acre in open fields in the south midlands between 1600 and 1624: pasture 5s 6d; light arable 6s 6d, heavy arable 5s 10d. (R. C. Allen, 'The price of freehold land and the interest rate in the seventeenth and eighteenth centuries', *Economic History Review*, 2nd series, 41 (1988), p.43; R. C. Allen, *Enclosure and the Yeoman* (Oxford, 1992), p. 172.)

¹⁰⁶ For example, in his will John Bland bequeathed 'all & singular my Coppiehold and Customarye lands Tenements and hereditaments' in Heage to trustees for his son, John, who was underage. He also bequeathed 'Three Closes called the Cowe Closes' in Heage to his daughters and 'Two Closes called the Cerkbe meadows' lying in Heage' to his son, George. (LRO: B/C/11, will of John Bland of Heage, probate granted 8 May 1635.) At the view of frankpledge held on 4 October 1628, William Johnson, Laurence Leason, John Grace and William Parker were presented for not scouring the ditches leading to Blakemore Field; Widow Serle was presented for not repairing the fence between 'le Come feild' and Holbrook Moor. (DRO: D1404/15, Duffield Court Book, March 1625–November 1628.) In 1635 commissioners recorded that in 1616 John Allsop owed an entry fine of £4 for the following land in Hulland: one messuage, two cottages, one orchard, two gardens, one close called Nether Croft, one close called the Old Paddock, one parcel of land called Toadhole Lane and one other close called Nether Royle, containing by estimation 20 acres of land. It had been surrendered to him for 21 years by Thomas Binney and was worth £8 *per annum*. (TNA: PRO: DL44/1147.)

¹⁰⁷ Walter Spendlowe's copyhold land in Heage included sixteen acres of 'woody ground', valued at 2s 9d per acre. (TNA: PRO: DL44/1142, entry for Walter Spendlowe's copyhold land in Heage.) Freehold land in Windley, Hazelwood and Duffield included thirty acres of 'firrs and heath'. (TNA: PRO: DL44/1142, entry for the freehold land of the heirs of Botham in Windley, Hazelwood and

viii. Commonable properties in Duffield

At the time of the 1634 survey there were about two hundred tenants, some of whom had more than one holding.¹⁰⁸ All of these tenants were legal commoners in the Frith since it was ownership of a manorial holding that conferred common rights there. Of the 264 holdings, 163 (61.7 per cent) included one or more dwellings, there being 182 manorial dwellings in all, including sixty-three cottages and two half-cottages.¹⁰⁹ The number of holdings with dwellings indicates not only that some tenants must have had sub-tenants in their surplus dwelling(s) but also that other tenants were either absentees or dwelt in homes that did not have common rights attached, even though their own land did. The survey indicates that where the only dwelling belonging to a holding was a cottage, the amount of land attached was frequently no more than an acre, only a quarter of the statutory area.¹¹⁰ However, such tenants should not necessarily be regarded as 'poor cottagers' since the tenants of every manorial holding, regardless of its size, were legal commoners in the Frith and so were entitled to exercise common rights there. But were manorial tenants the only commoners?

In an extensive survey of the Frith made in 1581, jurors' responses described commoning there.¹¹¹ In addition to tenants of the manor of Duffield and its members

Duffield.) 'Firrs' was furze i.e. gorse. It is not possible to calculate a value for this heathland as the commissioners did not value freehold land.

¹⁰⁸ Where possible multiple holdings have been identified: several tenants had multiple holdings of the same type of land; some held both customary and freehold land; some held land in two places. However, the total number of tenants approximate because some tenants had the same name and it is not possible to differentiate their holdings. For example there were two men named John Stables alias Baker in the manor, one of Windley and one of Duffield; several men were named Anthony Bradshaw, all related to the former deputy steward of the Frith.

¹⁰⁹ The 182 dwellings comprised 101 houses, sixty-three cottages, two half cottages, one capital messuage, thirteen messuages, one half messuage and one 'homestead'.

¹¹⁰ For example, widow Alice Cockeram of Duffield held a cottage with a 'backside' measuring just one rood; John Norman of Holbrook held a cottage and half an acre of meadow; John Stanfield of Hulland held a cottage and a rood of pasture.

¹¹¹ TNA: PRO: DL44/305, f. 13, (modern foliation), response to commission of 23 February 1581. The survey is published in full in Cox and Strutt, 'Duffield Forest in the Sixteenth Century', pp. 202-09. By this time, although game laws were still in place, enforcement was negligible due to a

who claimed, and were entitled to, common rights in the forest, the inhabitants of houses 'within the precinct' of the Frith claimed, and were permitted to exercise, common rights there.¹¹² This contemporary definition of inhabitants distinguishes those who dwelt within the boundaries Frith from those who lived outside it *and* were not tenants of the manor, that is, 'purlieu men'.¹¹³ At this time, and in this context, the term 'inhabitants' does not seem to have been used specifically to distinguish established residents from recent incomers, although the presence of 'auncient Cottagers' implies that their dwellings were distinct from recently erected cottages.¹¹⁴ The precise situation, however, is extremely difficult to reconstruct, partly because none of the surviving documents relating to Duffield specifically refer to 'commonable' or 'common-right' cottages. Presumably the copyhold cottages recorded in the 1634 survey were 'ancient cottages'; certainly as copyholders their tenants possessed *de jure* common rights.¹¹⁵ Nevertheless, as we shall see, some 'poor auncient Cottagers' had only *de facto* use-rights in the Frith, suggesting that not every ancient cottage had *de jure* rights attached.

Since all inhabitants of the Frith claimed customary use-rights there, their position with respect to commoning was similar to that which was tested in

decrease in game population. For a discussion of common rights within medieval forests, see Jean Birrell, 'Common rights in the medieval forest: disputes and conflicts in the thirteenth century', *Past and Present*, 117 (1987), pp. 22-49.

¹¹² 'And that all her majesties Tenauntes of Duffild, Bellparr, Makeley, Hassilwood, Windell & Turneditche, Howbroke & Southwood, Holland, Ideridghey, Byggyn, Ireton wood Bellparr, Hiege, & other houses within the precinct of the saide Duffild frith do clayme and use common of pasture for their shepe & all other cattail within & thorow out the common soyle of all the said wardes, namely those chiefly in eche of them which do abutt & bounde upon the same.' (TNA: PRO: DL44/305, f. 13.)

¹¹³ For 'purlieus' and 'purlieu men', both in general, and in particular at Duffield, see J. C. Cox, *The Royal Forests of England* (London, 1905), p. 9.

¹¹⁴ The term 'auncient Cottagers', where it refers to some inhabitants of Duffield is in TNA: PRO: DL44/305, f. 5, (modern foliation), petition dated 2 September 1587.

¹¹⁵ TNA: PRO: DL44/1142. Compare this with Janette Neeson's discussion of common-right cottages in eighteenth-century Northamptonshire. (J. M. Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700-1820* (Cambridge, 1993), pp. 61-64.) For a discussion of commonable cottages in the manors of Whittlesey St Mary and Whittlesey St Andrew, see Chapter 3, section viii, 'Forms of tenure in Whittlesey'.

Gateward's Case in 1607.¹¹⁶ Although the legal consequence of the judges' ruling in this case was to exclude cottagers from commoning because the right of common pasture was attached to specific properties, not to persons, where commons were extensive cottagers continued to exercise such use-rights. As E. P. Thompson has observed, 'in many areas indefinite rights of "inhabitants" prevailed until demographic pressure or the realities of local power resulted in their extinguishment or their tighter regulation by by-law'.¹¹⁷ This certainly happened at Duffield. By the 1630s thirty-four of the 'most substanciall Commoners' were no longer willing to countenance the exercise of customary use-rights. When, in 1632, the duchy proposed enclosing the Frith, these commoners requested a commission to determine exactly which inhabitants were *de jure* commoners and to bar those who were not.¹¹⁸ Similarly, in the early 1640s, Robert Mellor, one of the alleged leaders of the Duffield rioters stated that only about 280 '*persons that are freeholders, copyholders and leaseholders of the Messuages landes & tenements ... [in the various townships in the manor] ... have Claymed and enjoyed & of right ought to enjoy*' common rights in the Frith.¹¹⁹ However, as he also asserted that 'many hundreths of the Inhabitanes of the said severall townes [would be] very much ympoverished' if the enclosures stood, he may have been justifying the rioters' actions as a defence of *legal* rights rather than actually denying the validity of more generalised use-rights.

¹¹⁶ For Gateward's Case, see R. B. Manning, *Village Revolts: Social Protests and Popular Disturbances in England, 1590-1640* (Oxford, 1988), pp. 85-87; E. P. Thompson, *Customs in Common: Studies in Traditional Popular Culture* (London, 1991), p. 130.

¹¹⁷ E. P. Thompson, 'The grid of inheritance: a comment', in Jack Goody, Joan Thirsk and E. P. Thompson (eds), *Family and Inheritance: Rural Society in Western Europe, 1200-1800* (Cambridge, 1976), p. 339.

¹¹⁸ They requested 'the examinacion of the Right and Title of all such as pretend to have Common thereuppon to the end that theire severall Rightes may be knowne ... & those that have noe Right barred from any Common'. (TNA: PRO: DL44/1117, documents 4, 6 and 8, agreements signed by representatives of the commoners of Belper, Chevin and Hulland wards, August 1632.)

¹¹⁹ TNA: PRO: DL1/370, (unnumbered piece), answer of Robert Mellor, George Sellars, William Blidworth, John Storer and Thomas Milnes to the information presented by Sir Thomas Bedingfield, Attorney General, by the relation of Edward Syddenham, esquire, 26 May 1642, (emphasis added). For a discussion of the negotiations over the enclosures, who would benefit from them and who would be excluded, see Chapter 4, part 1, section iv, 'The improvement of the Frith'.

ix. The preservation and transmission of custom at Duffield¹²⁰

Having discussed the extent of entitlement to common rights, it is now necessary to consider the definitions of these rights. As we have already noted, full descriptions or mere sketches of customary practice have been preserved in various forms. Thanks to the activities of one particular inhabitant, detailed records of customs practised at Duffield survive from the late sixteenth century. In 1588, Anthony Bradshaw, deputy steward of the forest, wrote 'A Friends Due Comendacion of Duffeld Frith'.¹²¹ The form of this fifty-four stanza poem is best described as chorographical, in that it was concerned primarily with place. Before discussing its content, however, it is worth considering the origins of such an early example of this genre.¹²² Even its form is unusual as most chorographies, apart from Drayton's *Poly-Olbion*, were in prose.¹²³ Bradshaw, a lawyer by profession, practised both in the Inner Temple and in a 'prothonotaries office' in the court of Common Pleas at Westminster.¹²⁴ Although not named in the various lists of members of the

¹²⁰ The following discussion focuses on customs and customary rights within the Frith, rather than manorial customs regulating landholding. Although the local men who acted as manorial officials were often also forest officers, their roles were quite separate. Whilst, as we will see, the physical boundaries of the Frith were not clearly delineated, the jurisdictional boundaries were. Bradshaw's poem (see the following note) provides many details of the Frith's management, courts and officers. For a less florid discussion, see 'Forestry: Duffield Frith', in *VCH Derbys*, 1, pp. 413-20.

¹²¹ See Appendix 1 for a transcript of the poem. It was published in C. Kerry, 'A Poem on Duffield and Duffield Frith, written by Anthony Bradshawe, esq., of Duffield, in the year 1588', *The Reliquary*, 23 (1883), pp. 69-74. Two verses extolling James I were added later: internal evidence identifying various forest officials confirms that the poem was indeed written in 1588. The original version of the poem is in 'George Bradshaw's book on customs and liberties [of Duffield]', (1792). (DRO: D2402 A/PZ 2/1.) This book belonged to George Bradshaw, one of Anthony's descendants but appears to have been compiled mostly by the latter.

¹²² R. Helgerson, *Forms of Nationhood: The Elizabethan Writing of England* (Chicago and London, 1992), p. 132. Chapter 3, 'The Land Speaks' compares the works of cartographers and those of chorographers.

¹²³ The first part of *Poly-Olbion* was published in 1613, some 25 years after Bradshaw wrote his poem. In the 'song' on Nottinghamshire and Derbyshire, Drayton mentioned the forests of Leicester, Charnwood, Sherwood and the Peak, but he ignored Duffield Frith. (Michael Drayton, *Poly-Olbion*, 'The Sixe and Twentieth Song [Nottinghamshire & Derbyshire]', in J. W. Hebel (ed.), *The Works of Michael Drayton* (6 volumes, Oxford, 1933), 4, *Poly-Olbion*, pp. 521-34.) There is no indication that Bradshaw wrote the 'Comendacion' either for a patron or for publication.

¹²⁴ DRO: D2402 A/PZ 6/1, 'A. Bradshaw's book of customs etc', (unpaginated). Bradshaw was an influential local figure, who, as well as recording the customs and laws of Duffield, founded almshouses there, the stringent regulations for which have survived. His remarkable monument in the parish church depicts twenty of his twenty-three children and bears an acrostic spelling his name that

Elizabethan Society of Antiquaries, founded in 1586 by Camden, Bradshaw probably associated with them informally as many of them were, like him, practising lawyers.¹²⁵ The content of the 'Comendacion' is somewhat different from the 'bold, celebratory representations of the land and the agricultural uses to which it [was] put' written by other local chorographers, such as Carew, Stow and Lambarde, for Bradshaw celebrated the management of Duffield Frith rather than its topography.¹²⁶ Hence, the underlying purpose of 'this rude effect ... rashly done' was less to extol the perceived virtues of the Frith than to record the customs by which the forest was governed and landholding in the manor was regulated. The finished rhymes are therefore an idiosyncratic yet highly informative source for the organisation of an early modern forest and manor.¹²⁷

But Bradshaw's poem is by no means the only record of customs practised in the Frith. According to the jurors in 1581, common of pasture was the most important right exercised in the Frith and it was claimed in all three wards for unnumbered sheep and cattle all year round.¹²⁸ An annual payment of 56s 4d was

eulogises the way in which he brought them up. (For his almshouses and legal career see C. Kerry, 'Anthony Bradshaw, of Duffield, and the alms houses founded by him at that place', *The Reliquary*, 23 (1883), pp. 137-40. For his monument, see J. C. Cox, *Churches of Derbyshire*, 3, *The Hundreds of Appletree and Repton and Gresley* (London and Derby, 1877), pp. 138-39.)

¹²⁵ Eventually most leading English chorographers were members of the Society, but again, the early date of the 'Comendacion' should be emphasised: Bradshaw's offering was precocious. For the activities and membership of Elizabethan Society of Antiquaries, see M. McKisack, *Medieval History in the Tudor Age* (Oxford, 1971), Chapter 7: 'The Elizabethan Society of Antiquaries', pp. 155-69; R. J. Shoenck, 'The Elizabethan Society of Antiquaries and Men of Law', *Notes and Queries*, new series, 1 (1954), pp. 417-21; L. van Norden, 'The Elizabethan Society of Antiquaries' (unpublished PhD thesis, University of California, 1946); K. Sharpe, *Sir Robert Cotton 1586-1631: History and Politics in Early Modern England* (Oxford, 1979), Chapter 1: 'Sir Robert Cotton and the English Antiquarian Movement'. Some of the papers that they discussed are printed in Thomas Hearne, *A Collection of Curious Discourses*, ed. J. Ayloffe (2 volumes, London, 1771).

¹²⁶ For a discussion of the significance and content of such poetry, see A. McRae, *God Speed the Plough: The Representation of Agrarian England, 1500-1660* (Cambridge, 1996), 'Chapter 8, Chorography: the view from the gentleman's seat', quotation from p. 237.

¹²⁷ The verses also proclaim Bradshaw's pride in, and affection for, 'the place [in which] I could my race best runne', putting him on an equal footing with the other chorographers: 'Love and country, this was their common theme'. (Helgerson, *Forms of Nationhood*, p. 147.) Here 'country' refers to county or neighbourhood, as well as nation.

¹²⁸ TNA: PRO: DL44/305, f. 13. Forest commons differed greatly from manorial common wastes. Whilst the administration of the former became more lax over time and stinting was not enforced, if it

due to the crown collectively from the commoners for their 'liberty of commonage'.¹²⁹ During winter months, in order to feed the queen's game, they used to 'cropp, browse or top of' some of the underwoods.¹³⁰ They also fed their own sheep and cattle on these loppings, for which they were amerced in the forest court. Since the cropping and browsing was still continuing despite the absence of game, it seems that the fines so raised were effectively fees charged by the duchy for this privilege. This *laissez-faire* attitude was particularly generous because, although inhabitants as well as tenants were entitled to pasture 'all manner of beastes of there owne owning' within the forest at all times of the year, sheep were explicitly deemed 'not commonable' animals.¹³¹ Needless to say, in 1642 those accused of destroying the enclosures claimed that they were simply asserting their customary rights, particularly common of pasture, which was for all manner of cattle (that is, animals), without stint or number.¹³²

In September 1587 more than 500 copyholders, freeholders and ancient cottagers and householders, 'inhabitanes and borderers of Duffylde frythe',

was ever in place, the administration of the latter was more severely enforced and access restricted. These differences arose partly from variations in scale: in general, increased population levels put pressure on resources but where as manorial commons were relatively small, forest commons were sufficiently extensive to support large numbers of commoners and their livestock. For example, compare the stinting of Caddington Common (c.400 acres) with the unregulated commons within the royal forests of Northamptonshire. (Steve Hindle, 'Persuasion and Protest in the Caddington Common Enclosure Dispute, 1635-1639', *Past & Present*, 158 (1998), p. 49; Pettit, *Royal Forests of Northamptonshire*, pp. 154-58.)

¹²⁹ The jurors in 1581 did not refer to this annual payment but those summoned to discuss the proposed enclosure in 1632 and to report to Commonwealth surveyors in 1650 did. 'The chiefe Rent due from severall Townes adjacent to Duffield Frith aforesaid for their Libertye of Commonage therein is per Annum Lvi s iiii d.' (TNA: PRO: DL44/1117; TNA: PRO: DL32/4, which is a copy of TNA: PRO: E317/Derb/18.)

¹³⁰ TNA: PRO: DL44/305, f. 13.

¹³¹ DRO: D2402 A/PZ 6/1, 'Bradshaw's book of customs', entry under 'Common'. Clearly the matter of commoning sheep was of great importance, and possibly contention, in Duffield. In 1611, during the course of abortive negotiations concerning the enfranchisement of copyholders, tenants asked Thomas Fanshawe, the duchy's Auditor, 'Whether are sheepe Comonable within a Chace or forrest?'. He confirmed that 'they may be by prescription'. (DRO: D5195/1/1/1, a record of (leading) questions posed by Duffield copyholders and answered by Fanshawe, catalogued as 'Duffield Frith customs and laws, 1611'.) The project to enfranchise the copyholders is discussed in Chapter 4, part 1, section ii, 'Composition for fines and the sale of copyholds'.

¹³² TNA: PRO: DL1/370, answer of Robert Mellor *et al.*, 26 May 1642.

petitioned the queen against a plan for leasing underwoods there.¹³³ In so doing they provided an incidental record of their customs. In addition to common of pasture, they stated that ‘by all the time of mans remembrance’ they had taken ‘howsebootes heybootes plowebootes and hedgeboote with convenient and reasonable firewood to burne in their dwelling houses’.¹³⁴ Also, ‘poore auncient Cotagers inhabitinge and borderinge’ on the Frith had experienced ‘great relief’ from it, having been permitted ‘by the goodness and good favour’ of previous duchy chancellors to enjoy its benefits ‘quietly in reasonable sorte’.¹³⁵ This popular exploitation, allowed to continue by the grace of landlord, might be construed as an act of paternalism by the duchy. Equally, however, it could be described as pragmatic: as both the surveyors in 1581 and the commoners in this petition pointed out, whilst open access to the forest remained, its inhabitants would be able to maintain themselves without the charity and hospitality of their betters.

In response to this petition, the duchy council decided to postpone the plan to lease the underwoods pending further discussion with the Duffield commoners. In June 1588, Edward Stanhope, surveyor of the duchy’s possessions in the North, summoned representatives of the ‘better sorte’ of the tenants to consider how their

¹³³ TNA: PRO: DL44/305, f. 5, 2 September 1587. A second, more comprehensive account of the commoners’ objections is to be found in ff. 8,9 of the same bundle. This stresses the financial losses that the Duchy would incur if the tenants own incomes were reduced as a result of the lease.

¹³⁴ The ‘bootes’ claimed were respectively wood to repair houses, to make or repair fences, to make or repair ploughs and to make or repair fences. (i.e. hedgeboote and heyboote were synonymous) (J. Richardson (ed.), *The Local Historian’s Encyclopedia* (2nd edition, Barnet, 1986), p. 18.) At Duffield, ‘hedgeboote’ was only taken every third year and it was for the repair of the fences around the common fields that abutted on the woods. (TNA: PRO: DL44/305, f. 13.) In about 1612, when the earl of Shrewsbury was about to fell timber in the Frith, Henry Gregson informed him of all the rights in the Frith claimed by tenants. They were virtually the same as those described in 1587. ‘He did acquainte the said Earl that tyme out of mynd as hee hath heard auntient men say that the kinges Tenautes had Common of Estovers within the said wardes & Forrest and alsoe Tymber for their houses Fireboote plough boote & tynsill for their Ringe Fences Bridges over Rivers within the said Frith & for many other Comon & necessarie thinges. (TNA: PRO: DL4/79/14, deposition of Henry Gregson of Turnditch, gentleman, made on 9 July 1629 but recalling events that took place sixteen to seventeen years previously.)

¹³⁵ Presumably this is the origin of the common of pasture allowed to ‘inhabitants’ discussed above.

interests, as well as the duchy's, might be accommodated.¹³⁶ In 1587 the petitioners had observed that if their common of pasture were to be 'taken from us we and all ours shall be utterly Impoverished therby and constrained to seeke dwellings other where'.¹³⁷ Mindful of the problems that would ensue from such dislocation, Stanhope attempted to assuage the tenants' fears, in particular the possibility of insufficient browse for their animals if the underwoods were leased. Whilst offering to circumvent this, he commented wryly that the duchy was not obliged to do so for this was not a common right 'but of curtesy [enjoyed] since the deare were decayed in the Frieth'.¹³⁸ This implied attack on their rights spurred the tenants to request more time to consider the matter of the lease; they also asked for their 'customs of fines heriottes, and suche like duties from them to her Majestie' to be 'dewlie proved by inquisition and othe'. This suggests that these tenants now wanted the customary level of entry fines on copyholds by inheritance to be written down, and therefore fixed, whereas previously they had been fluid; certainly Stanhope interpreted it thus.¹³⁹

When the representatives reconvened on 20 July 1588, Anthony Bradshaw was with them. They were more submissive than formerly, agreeing to accept the duchy's decision as final. The issue of the confirmation of their entry fines was not raised again. That Stanhope did not do so is unsurprising for as he commented, it was 'no part of the substance of [his] comission'. Why the tenants failed to press on is more problematic. While the original seven representatives had provided an

¹³⁶ TNA: PRO: DL44/305, f. 3, summons from Edward Stanhope, 27 June 1588. Stanhope had been one of the commissioners who surveyed the Frith in 1581. Note the ponderously slow rate at which the matter progressed.

¹³⁷ TNA: PRO: DL44/305, f. 5, petition of 500 tenants and inhabitants of Duffield Frith, 2 September 1587.

¹³⁸ TNA: PRO: DL44/305, f. 1, report by Stanhope of his meetings with the tenants' representatives, 10 October 1588. The following account of the meetings is taken from this document.

¹³⁹ As we have seen, copyhold by inheritance was the most prevalent form of tenure within the manor of Duffield. For the crown's attempts to confirm entry fines, see Chapter 4, part 1, section ii, 'Composition for fines and the sale of copyholds'.

opportunity for the ‘confirmacion and putting in certaine of their customes’, the six who returned let it pass. Given Stanhope’s parting shot at the previous meeting and Bradshaw’s vast knowledge of the customs of both the manor and forest, it is tempting to speculate that Bradshaw’s presence at the second meeting was anything but coincidental. Effectively Stanhope had called into question one of the most important and valuable customs enjoyed in the Frith, that of tenants’ animals browsing the underwoods; perhaps the validity of those relating to copyhold entry fines might not have withstood close scrutiny either. By failing to have them confirmed following an inquisition, the tenants retained the characteristic fluidity of these particular customs but missed the chance to fix the value of entry fines, leaving their heirs prey to financial uncertainty.¹⁴⁰

The extent of the woodgrounds within the three wards was not recorded either; consequently, the absence of fences on the ground, and lines on paper, allowed inhabitants to exploit these spaces.¹⁴¹ Woodgrounds not only supplied the crown with timber and wood, its main source of income from the Frith, but also provided the inhabitants with the most sheltered and lush areas for animal grazing. In 1592 an attempt by the duchy to delineate the boundaries of these woodgrounds met with stubborn resistance from local jurors, who claimed disingenuously that they could not be measured because some areas did not actually contain any wood.¹⁴² The jurors had also been instructed to set out physically the boundaries of the woodgrounds ‘so as the same may herafter perfectlie be knowen’. Even if the extent of the woodgrounds were simply marked out rather than fenced in, the tenants’

¹⁴⁰ It would have been in the tenants’ interest to have had their entry fines made certain because uncertain fines could be arbitrarily increased by the landlord on the death of a tenant.

¹⁴¹ ‘Woodgrounds’ was the local term for the wooded areas within the Frith.

¹⁴² TNA: PRO: DL44/484. The commission is dated 14 June 1592. One of the documents in this bundle has been transcribed in Cox and Strutt, ‘Duffield Forest in the Sixteenth Century’. The reference given by the editors (DL44/404) is incorrect.

virtually unlimited usage would be circumscribed; foreseeing this, the jury refused to cooperate. As long as the boundaries remained unmarked, they were moveable; indeed, locals could conveniently ‘forget’ them. As Fentress and Whickham have observed, memory ‘is not a passive receptacle, but instead a process of active restructuring, in which elements may be retained, reordered, or suppressed.’¹⁴³ Their failure to define the boundaries was another occasion when the commoners of Duffield preferred to retain the forest customs in their memories rather than delineate them, either in writing or in markers on the ground.

However, before hailing the Duffield tenants as champions of oral culture, it should be noted that at this time the manorial and forest customs were, in fact, preserved in writing by the tenants themselves as well as by the duchy. There were at least three different versions of their customs, each set down for a different purpose. Firstly, it was in 1588 that Bradshaw penned his poem praising the Frith and rehearsing its customs, thus capturing them in ink. It is tempting to speculate whether some of these verses were based on the songs and mnemonics by which, according to Bradshaw, ‘the poorer sort & ignorant’ of Duffield learned their customs.¹⁴⁴ Perhaps he decided to set them down precisely because their validity was being questioned by the duchy: although this intensely personal record would preserve the various forest and manorial customs, unlike any record drawn up in the Duchy Court, it neither would, nor could, be used by duchy officials against the interests of the commoners.

Secondly, Bradshaw noted that the better sort of Duffield could refer to three sets of ‘official’ documents: part of the ‘Cowcher’; a ‘Custome booke’; and ‘our

¹⁴³ J. Fentress and C. Wickham, *Social Memory* (Oxford, 1992), p. 40.

¹⁴⁴ ‘A Friends Due Comendacion’, stanza 51. The rhythm and rhyme of song and verse were easier to remember than prose. For examples of rhyme used to facilitate memory, see Adam Fox, *Oral and Literate Culture in England 1500-1700* (Oxford, 2000), pp. 266-67.

Charter'.¹⁴⁵ These three documents, property of the duchy, were held at Tutbury Castle, some twelve miles away.¹⁴⁶ They were statements drawn up by, and for, the duchy's benefit and use. The Tutbury Coucher, for example, was 'an attempt at a systematic listing of common rights' in Needwood Forest and Duffield Frith drawn up in the early fifteenth century.¹⁴⁷ Perhaps surprisingly, given their provenance, Bradshaw even claimed that all three documents were for 'Duffelds good' because they 'do generally agree that Duffeld hath theis customes pure & privileges Free'.¹⁴⁸ That these 'Jewells three' benefited the tenants as well as the landlord is confirmed by Duffield men's entitlement to appeal to them whenever they were 'wronged in ther land or hurt in common weale'.¹⁴⁹ As the various customs relating to the different forms of copyhold tenure in Duffield were complex, appeals to these written records did occur.¹⁵⁰ Indeed, Bradshaw claimed that when uncertainties regarding copyhold by inheritance arose the 'costomes writt do rule as costomes books doe show', suggesting that, on such occasions at least, written records might be more reliable than tenants' memories.¹⁵¹

¹⁴⁵ DRO: D2402 A/PZ 6/1, 'Bradshaw's book of customs'. Presumably by 'custome booke', Bradshaw meant a *custumal*, that is, a record of the customs of the manor drawn up by a manorial jury and retained by the lord of the manor. (See 'Custumal', in D. Hey (ed.), *The Oxford Companion to Local and Family History*, (Oxford, 1996), p. 125.) 'The Charter Coucher & Custome booke' were also mentioned in 'A Frends Due Comendacion', stanzas 25 and 51, where Bradshaw referred to them as 'three jewels'.

¹⁴⁶ Of the three documents, only the Coucher survives today. (See the following note.)

¹⁴⁷ Birrell, 'Common rights in the medieval forest', p. 25. BL: Harleian MSS 568 and 5138 are respectively sixteenth- and seventeenth-century copies of the Tutbury Coucher. The parts relating to Duffield Frith from another version have been published in C. Kerry, 'A History of Peak Forest', *DAJ*, 15 (1893), pp. 95-98.

¹⁴⁸ 'A Frends Due Comendacion', stanza 26. Bradshaw himself made notes from the custom book. In December 1607 he wrote to the earl of Shrewsbury 'enclosing notes taken from the Custom Book'. (C. Jamison (ed.), *A Calendar of the Shrewsbury and Talbot Papers in Lambeth Palace Library and the College of Arms*, 1, *Shrewsbury MSS in Lambeth Palace Library (MSS 694-710)*, (Derbyshire Record Series, 1, London, 1966), MS 702, f. 83.)

¹⁴⁹ 'A Frends Due Comendacion', stanza 25.

¹⁵⁰ The various types of copyhold are described by Bradshaw in 'A Frends Due Comendacion', stanzas 37 to 49 and in DRO: D2402 A/PZ 6/1.

¹⁵¹ 'A Frends Due Comendacion', stanza 49. For a discussion of 'structural amnesia', the process by which collective memory is automatically adjusted to suit existing social relations, see Jack Goody and Ian Watt, 'The consequences of literacy', in Jack Goody (ed.), *Literacy in Traditional Societies*

Thirdly, in addition to his poem, Bradshaw took it upon himself to transcribe various records relating to Duffield into 'litle books for precedents for the proceadings processes & entries' so that they were accessible locally.¹⁵² As deputy steward of the Frith, these writings would facilitate 'the better & more upright & easye performances of my dutie in that place'. They would also benefit the tenants because, as he told his sons, his writings were for 'the better to instruct your naighbors in Copyhold causes, courts, tenures, & orders, & Forest laws'. He subsequently engrossed these detailed records of Duffield's customs into one book, which was available for consultation whenever need might arise.¹⁵³ Its importance to the tenants is underlined by the fact that it was indeed referred to in several lawsuits during the seventeenth century; the point being that it was *their* record as opposed to the landlord's.¹⁵⁴ Possession, and therefore proof, of their customs was crucial on such occasions.

Even if the various incarnations of Duffield's customs were not unique in themselves, that they have all survived, and can therefore be evaluated by historians, probably is exceptional. Customs rehearsed in the songs and memories of the 'poorer sort & ignorant' were not formally preserved but many were articulated in depositions and petitions and, arguably, were transliterated in Bradshaw's poem.

(Cambridge, 1968), pp. 32-34. For the selective memory of tenants, see Fox, *Oral and Literate Culture*, p. 275.

¹⁵² These records are preserved in DRO: D2402 A/PZ 6/1, 'Bradshaw's book of customs'. Bradshaw himself describes this particular document as a draft, of which he had hoped to make a fair copy. Parts of it have been transcribed in Kerry, 'Anthony Bradshaw, of Duffield', pp. 137-40

¹⁵³ Well-versed in local customs, Bradshaw was the best person to set them down for future generations. That such an action could benefit a community is clearly demonstrated by events at Ombersley, Worcestershire, where Samuel Sandys, lord of the manor, waited until the death of the most influential of the leading tenants in 1606 before demanding, and obtaining, increased entry fines. (Peter Large, 'Rural society and agricultural change: Ombersley 1580-1700', in J. A. Chartres and D. Hey, *English Rural Society 1500-1800: Essays in Honour of Joan Thirsk* (Cambridge, 1990), p. 116.)

¹⁵⁴ For example, Bradshaw's book was referred to in 1641 during a dispute over entry fines. (TNA: PRO: DL4/98/29.) Interrogatory number 2 for the defendant asked: 'Was not the said Anthony Bradshaw well acquaynted with the Customes & usages of the said Mannour? And was hee not industrious & carefull in wryteing & keepeing books of the sayd Customes & usages? And was not the booke nowe shewed unto you the sayd Anthony Bradshawes booke?'

The latter also versifies customs that had been written in the ‘Charter Coucher & Custome booke’, legal documents produced and kept by the duchy. Bradshaw’s legal training persuaded him to produce his own reference books, but he was careful to draw them up in ‘a mixt forme agreable to custome & the course of Comon Law’, thus steering a middle course between the traditions of the past and the growing demands of the law.¹⁵⁵

Many social historians have recognised the politics of custom at work in various early modern communities.¹⁵⁶ Duffield was not the only place in which inhabitants articulated customs in battles, both legal and physical, with landlords and agricultural improvers. Anthony Bradshaw was not the only person to record local customs. Other contemporary observers, such as John Smyth of Nibley (Gloucestershire), noted customary laws and local traditions, although not necessarily expressly to preserve them for posterity.¹⁵⁷ What is rare is that here, in the person of Anthony Bradshaw, these two strands are intertwined. The contribution of his writings to our knowledge of the customs of early modern Duffield is invaluable: the ‘Comendacion’ and his ‘litle books for precedents’ reveal much that would otherwise have gone unrecorded. Just as important, however, are his actions that prevented some of those customs being abolished. We have already seen that, in 1588, his presence in the duchy court prevented the codification of fluid inheritance customs; we shall see how, in 1611, he stalled and then halted the

¹⁵⁵ DRO: D2402 A/PZ 6/1, ‘Bradshaw’s book of customs’.

¹⁵⁶ As we have already seen, the concept of the ‘politics of custom’ is succinctly articulated in K. Wrightson, ‘The politics of the parish in early modern England’, in P. Griffiths, A. Fox and S. Hindle, (eds), *The Experience of Authority in Early Modern England* (Basingstoke, 1996), pp. 22-24.

¹⁵⁷ John Smyth, *A Description of the Hundred of Berkeley in the County of Gloucester and of its Inhabitants*, ed. Sir John Maclean, *The Berkeley Manuscripts*, 2 (Gloucester, 1885). Smyth’s writings have been discussed at length in David Rollison, *The Local Origins of Modern Society: Gloucestershire 1500-1800* (London, 1992), Chapter 3, ‘Proverbial culture’. Adam Fox has observed that Smyth’s purpose was to explore the impact of the natural division of the county that demarcated the vale of Berkeley from the rest of the county and ‘to express the psychological meaning of country and neighbourhood’. (Fox, *Oral and Literate Culture*, p. 77.)

crown's plans to convert copyholds to freeholds thus averting the destruction of customary landholding in the manor. Historians have rarely been able to focus on such an individual who not only produced copious and varied records of local customs but who also played a crucial, active role in their defence and preservation.

Bradshaw was not the only Duffield inhabitant to look to the past. In depositions, others often repeated customs that they 'hath heard the auntient men say'.¹⁵⁸ The variety of ways in which these customs were preserved, remembered and used demonstrates that there, at least, oral and written forms were not necessarily *in conflict*.¹⁵⁹ That this storehouse of memory, containing an arsenal of weapons of the weak, might *provoke conflict* between inhabitants and their landlord is another matter entirely. As we will see, from the outside this backward-looking community with its under-exploited assets appeared an easy nut to crack; the kernel, however, was protected by a shell of custom articulated by resourceful, politically-aware inhabitants determined to preserve for future generations their way of life based on the resources of the Frith and its hinterland. And it is to their occupations that we must now turn our attention.

¹⁵⁸ See, for example, TNA: PRO: DL4/79/14, earl of Newcastle *versus* Treswell & Jaye, examination of Henry Gregson of Turnditch, gentleman, 24 September 1629.

¹⁵⁹ A. Fox and D. Woolf, 'Introduction', in A. Fox and D. Woolf (eds), *The Spoken Word: Oral Culture and Britain, 1500-1850* (Manchester, 2002), p. 8.

x. Farming practices in Duffield

It has been observed that ‘the agricultural character of Derbyshire [was] as varied as its surface’.¹⁶⁰ David Hey has identified several farming regions in the north-west Midlands during the period 1640-1750, each of them being differentiated by agricultural practices, rather than topography.¹⁶¹ Lying on the cusp of two very different land types, Duffield happens to be the meeting point of three of Hey’s regions: a large area covering the Peak District (subsistence corn with stock and industries); a narrow block including Alfreton and Chesterfield (corn and cattle with substantial dairying; corn and livestock, sometimes including dairying, with industries); and an inverted triangle including Derby and Uttoxeter (corn and sheep; corn and cattle with substantial rearing). Duffield’s position at the junction of these areas suggests that farming there might include sheep- and cattle-rearing and dairying as well as corn production and industries. To test this hypothesis, evidence has been used from the 221 extant probate inventories from the parish dated between 1625 and 1680.¹⁶² Despite the various limitations of inventories and numerous

¹⁶⁰ Charles Bowles, ‘Agriculture’ in Page (ed.), *VCH Derbys*, 2, p. 305.

¹⁶¹ David Hey, ‘The North-West Midlands: Derbyshire, Staffordshire, Cheshire and Shropshire’, in J. Thirsk (ed.), *AHEW*, 5, part 1, *1640-1750, Regional Farming Systems* (Cambridge, 1984), pp. 129-43. The regions are shown on Figure 5.1, ‘Farming regions of the north-west Midlands’, p.131. The period covered by this economic study of Duffield actually spans Volumes 4 and 5 of *AHEW*. Hey’s divisions are useful but much of his work concentrates on the eighteenth century. The section covering Derbyshire in Volume 4 provides only very general information about the county’s farming practices. For example, ‘Derbyshire was said to produce little grain except oats and to be unable to feed more than half the population with hardcorn growing in the county.’ (J. Thirsk, ‘The farming regions of England: The West Midlands: Herefordshire, Shropshire, Staffordshire, Worcestershire and Derbyshire’, in J. Thirsk (ed.), *AHEW*, 4, *1500-1640* (Cambridge, 1967), p. 99.) Is it an indication of the varied, or perhaps unremarkable, nature of Derbyshire’s farming that the editor of *AHEW* was not consistent when associating Derbyshire with other counties? In Volume 4 it was included with Herefordshire, Shropshire, Staffordshire, and Worcestershire in ‘The West Midlands’ and in Volume 5 with Cheshire, Shropshire and Staffordshire in ‘The North-West Midlands’.

¹⁶² This period has been selected because it covers the extant manorial survey, the enclosure, Hearth Tax assessments and just beyond. It also spans the years during which it is *likely* that any of the Duffield rioters or enclosure agreement signatories died. No inventories were made between mid December 1650 and August 1660. The absence of inventories between 1650 and 1653 was probably due the impact of the Interregnum upon provincial ecclesiastical courts. From 1653 to 1660 the Court of Probate in London had sole testamentary jurisdiction throughout England and Wales. (Nigel Goose and Nesta Evans, ‘Wills as an Historical Source’, in Tom Arkell, Nesta Evans and Nigel Goose (eds), *When Death Do Us Part: Understanding and Interpreting the Probate Records of Early Modern*

caveats relating to the information contained them, they are the most useful sources relating to the ownership of 'goods, cattle and chattels' that are available to early modern historians.¹⁶³

In a recent study of inventories from Cornwall and Kent, Mark Overton devised a scheme for categorising the amount of animals and/or crops listed in an inventory that gives 'an indication of the scale of agricultural activity and the likely amount of land that a household had available'.¹⁶⁴ He divided agricultural activity into four categories in terms of access to land and likely degree of commercialisation.¹⁶⁵ As the limits of Overton's categories were determined by the contents of the inventories from Cornwall and Kent, they reflect general agricultural trends in those counties: for example, he does not make provision either for mixed farming or for individuals who had no domestic animals or crops at all. Although in principle his scheme is eminently suitable for analysing agricultural activity, it has been necessary to adapt his categories to suit analysis of the Duffield area (see Table 2:7 overleaf).

England (Oxford, 2000), p. 40) The wills of about thirty Duffield men were proved in the Prerogative Court of Canterbury during the 1650s (none were proved there in the earlier period) but no accompanying inventories have survived.

¹⁶³ When analysing inventories, it must be remembered that they can only be used in a positive way: absence of evidence is not evidence of absence. The total number of inventories recording a particular item is the *minimum* not the *absolute* number of occurrences of it in those households. For caveats concerning probate inventories, see, for example, M. Spufford, 'The limitations of the probate inventory' in Chartres and Hey (eds), *English Rural Society*, pp. 139-74; Mark Overton, Jane Whittle, Darron Dean and Andrew Hann, *Production and Consumption in English Households, 1600-1750* (Abingdon, 2004), pp. 13-26; L. C. Orlin, 'Fictions of the early modern English probate inventory', in H. S. Turner (ed), *The Culture of the Capital: Property, Cities and Knowledge in Early Modern England* (London, 2002), pp. 57-63. Of course the main limitation relating to probate material is that fact that only a small proportion of the early modern population actually left a will or had an inventory taken. For the survival rates of such documents, see Goose and Evans, 'Wills as an Historical Source' and Tom Arkell, 'Interpreting Probate Inventories', in Arkell, Evans and Goose (eds), *When Death Do Us Part*.

¹⁶⁴ Overton *et al.*, *Production and Consumption*, quotation from p. 40.

¹⁶⁵ Group 1: poultry, and/or bees, and/or one to two pigs; Group 2: three to ten pigs, and/or one to ten sheep, and/or one to two cattle, but no arable crops; Group 3: more than ten pigs, and/or more than ten sheep, and/or more than two cattle, but no crops; Group 4: arable crops, and/or arable farming equipment. (Overton *et al.*, *Production and Consumption*, p. 40.)

Table 2:7. Farming categories in Duffield (adapted from Overton)

Group	Farming characteristics	Number of inventories	Per cent
0farming	no animals or crops at all	22	10.0
1domestic	poultry, and/or bees, and/or 1 pig, but no crops	4	1.8
2crops	crops and (usually) poultry, and/or bees, and/or 1 pig	3	1.4
3pastoral	2 pigs, and/or 1-10 sheep, and/or 1-2 cattle, but no crops	22	10.0
4mixed	2 pigs, and/or 1-10 sheep, and/or 1-2 cattle, and crops	14	6.3
5pastoral	>2 pigs, and/or >10 sheep, and/or >2 cattle, but no crops	22	10.0
6mixed	>2 pigs, and/or >10 sheep, and/or >2 cattle, and crops	134	60.6
Total		221	100.1

Source: LRO: B/C/11 inventories from Duffield parish, 1625-1680

To summarise briefly, given that the parish of Duffield was situated in rural Derbyshire, it is scarcely surprising that only 10.0 per cent of the inventories do not mention any crops or animals.¹⁶⁶ The thirty-six inhabitants whose inventories fit categories ‘3pastoral’ and ‘4mixed’ were probably smallholders with access to grazing as they had no more than ten sheep and/or one or two cows. The 156 inhabitants whose inventories fell into either ‘5pastoral’ or ‘6mixed’ were involved in large-scale pastoral farming at a commercial level. Those 134 in ‘6mixed’ were also arable farmers, suggesting that the majority of inhabitants (60.6 per cent) whose goods were inventoried were engaged in mixed farming for the market.

¹⁶⁶ Overton suggests that people whose inventories contained no evidence of arable production and no animals apart from bees, poultry and a pig (at Duffield, categories ‘0farming’ and ‘1domestic’) could be classed as cottagers since they apparently had no access to land other than a garden, and no common grazing rights. Such a generalisation does not apply at Duffield as these groups (comprising twenty-six (11.8 per cent) of the inventories) include two gentlemen, six yeomen and a blacksmith.

xi. Mixed farming

During the early modern period in many parts of the Midlands farmers converted to 'alternate husbandry': the practice of alternating the use of a given piece of land between arable and pasture, which virtually eliminated the need for fallows between grain crops.¹⁶⁷ Duffield farmers had the added benefit that they were not wholly dependent on pasture or fallows for grazing: their animals could graze in the Frith. Of the 221 Duffield inventories, 148 (66.9 per cent) indicate that the deceased had practised mixed farming to some degree ('4mixed' and '6mixed' in Table 2:7), and, as we have noted, of these 134 ('6mixed') were engaged in mixed farming for the market. However, closer analysis shows that, in general, animal-rearing and dairying were more valuable to Duffield farmers than grain-production: in only seven inventories did the value of grains and hay exceed the value of animals appraised.¹⁶⁸ It has not been possible to identify precisely which farmers were producing grain commercially because it is impossible to calculate the value of grain required for subsistence and therefore who was producing a surplus.¹⁶⁹ However, it seems reasonable to suggest that those men with grain valued at £20 and over were producing it for the market. Thirty-four inventories (15.4 per cent of the total) listed

¹⁶⁷ John Broad, 'Alternate Husbandry and Permanent Pasture in the Midlands, 1650-1800', *Agricultural History Review*, 28 (1980), pp. 77-89.

¹⁶⁸ LRO: B/C/11, inventories of Anthony Street of Belper Ward, grain £8, animals £3 (appraised 21 July 1636); Thomas, Chatbourne of Duffield, grain £11, animals £10 16s (appraised sometime in October 1661); John Lee of Postern, grain £13 7s 6d, animals £7 8s (appraised 13 November 1638); John Matkyn of Shottle, grain £16 15s, animals £15 15s (appraised 21 June 1673); John Storer of Bradley Laund, grain £21, animals £20 3s 4d (appraised 17 June 1676); Edward Key of Cow House Lane, grain £32, animals £23 (appraised 8 June 1635).

¹⁶⁹ In *Agricultural Revolution in England*, Overton's analysis of agricultural output and productivity, and therefore subsistence levels of grain, deals with grain yields, i.e. land productivity, rather than farmers' income. (M. Overton, *Agricultural Revolution in England: The Transformation of the Agrarian Economy 1500-1850* (Cambridge, 1996), Chapter 3.) When analysing inventories, the scale of an arable farmer's output is usually measured from the acreage of crops or volume of stored grain. (Overton *et al.*, *Production and Consumption*, p. 35.) The Duffield inventories do not provide sufficient information of this kind.

grain worth £20 and over, the highest valuation being £60.¹⁷⁰ In contrast, ninety-eight (44.3 per cent) valued over £20-worth of animals, of which ten exceeded £100, the highest valuation being £283.¹⁷¹ If the nature of the land permitted mixed husbandry, which it clearly did at Duffield, commercial farmers were able to take advantage the rising prices resulting from the population increases. Even though the price of basic grains rose most, the demand for livestock rose only slightly less rapidly. From the point of view of increased demand, mixed farming was profitable; from the point of view of commercial risk-taking, it was relatively secure. 'The risk of local grain shortages, the cheapness of labour, and the higher yields claimed for both arable and livestock under the system, all favoured a relatively intensive mixed farming'.¹⁷² But what were the particular elements of the mixed farming practised at Duffield?

xii. Arable farming

The inventories provide scant details of acreages under grain and so only a very general picture of arable farming in Duffield can be sketched.¹⁷³ The food and

¹⁷⁰ LRO: B/C/11, inventory of George Gregson of Turnditch, gentleman (appraised 21 September 1670). The total value of Gregson's inventory was just over £313; animals were valued at £142 10s. Analysis of the place of residence of the deceased given in the inventories does not suggest that arable farming was more prevalent in any one area of the parish, although obviously the flatter areas were more suitable.

¹⁷¹ LRO: B/C/11, inventory of George Pole of Heage, esquire (appraised 7 March 1674). The total value of Pole's inventory was just over £656; grain was valued at £44 8s.

¹⁷² Broad, 'Alternate Husbandry', p. 78. Price rises are analysed in *AHEW*, 4, pp. 602-03.

¹⁷³ Inventories from Duffield are not unique in this respect. Those from Lichfield also give few details of acreages under cultivation: out of 190 inventories from the city and surrounding area, only fifty-five mention corn/grains growing on the ground, of which only twenty-two indicate acreages and only three give sufficiently detailed acreages and values to enable calculations of valuations. (D. G. Vaisey (ed.), *Probate Inventories of Lichfield and District 1568-1680*, (Staffordshire Record Society, 4th series, 5, 1969). Similarly in the Chesterfield area, of the thirty-five inventories produced between 1630 and 1650 that mention grain, only two give acreages, only one of which permits calculations. (J. M. Bestall and D. V. Fowkes (eds.), *Chesterfield Wills and Inventories 1604-1650* (Derbyshire Record Society, 28, Chesterfield, 2001). Appraisers at Ombersley were equally uninformative: for the whole of the seventeenth century, there were 136 summer inventories, nineteen of which provide full crop acreages. (Large, 'Rural society and agricultural change', p. 109.) In contrast, from the work of Paul Glennie, it is clear that appraisers in Hertfordshire recorded far more details than their

fodder crops being grown within the parish were wheat and rye, both separately and together as blendcorn, barley, oats, peas and beans.¹⁷⁴ In his *Boke of Husbandrye*, Fitzherbert, himself a Derbyshire man, advocated the cultivation of blendcorn because the rye would probably succeed if the wheat failed and *vice versa*.¹⁷⁵ Fussell comments that 'the mixture was a fairly safe crop for the chancy conditions of [Fitzherbert's] native country'.¹⁷⁶ The flour milled from these grains was used for bread-making. Barley was a versatile crop that grew on light soil and could be used for bread, stockfeed or malt.¹⁷⁷ As well as for fodder, oats were grown for human consumption.¹⁷⁸ That more inventories valued peas than beans is probably an indication of the type of soil on the particular farms: peas need light soil whereas beans need heavy.¹⁷⁹ The total value of crops and grains within the inventories

counterparts in the Midlands. (Paul Glennie, 'Continuity and change in Hertfordshire Agriculture, 1550-1700', *Agricultural History Review*, 36 (1988), pp. 55-75.)

¹⁷⁴ Only fifteen inventories specified which crops the deceased had been growing; the remainder simply valued 'corn' or 'grain'. Examples of specific crops valued include: Henry Bradshaw, gentleman, of Holbrook (appraised 19 May 1679) had twenty strikes (bushels) of rye valued at £3 10s (3s 6d per bushel) and twelve strikes of oats at 12s. Richard Hanson of Heage (appraised 28 March 1638) had oats, barley and some rye, valued at £2. John Hanson of Heage (appraised 19 September 1660) had wheat, blendcorn, oats and peas in the barn valued at £6 10s. John Stables, mentioned above, had blendcorn, beans and oats. Records of tithe disputes in the 1630s show that tithes in the parish were due on rye, wheat, barley, oats, blendcorn, peas and beans. (LRO: B/C/5, Lichfield Consistory Court records, 1633, 1634, 1635, Duffield.)

¹⁷⁵ Cited in G. E. Fussell, 'Four centuries of farming systems in Derbyshire: 1500-1900', *DAJ*, 71, new series, 24 (1951), p. 3. For a discussion of Fitzherbert's identity, see Fussell, *ibid.*, p. 5.

¹⁷⁶ Fussell, 'Four centuries', p. 3.

¹⁷⁷ A further seven inventories specifically value malt and another ninety-one list brewing vessels of some kind indicating that much of the barley was used in brewing. For example: George Pole, esquire, of Heage (appraised 7 April 1674) had thirteen and a half quarters of malt in the malt chamber, valued at £18 18s. Lancelot Brett, yeoman, of Wiverslough (appraised 28 December 1663) had several strikes of malt valued at 12s. Francis Robinson of Belper (appraised 12 April 1633) had two brewing vats. Robert Holland of Heage (appraised 26 December 1670) possessed brewing tubs.

¹⁷⁸ Three inventories list an 'oate cake stone' or a 'backstone'. An oatcake stone was a flat piece of stone or iron, heated by a grate below, for cooking oatcakes. A backstone was a large flat stone or iron plate on which oatcakes were baked over the fire. Oatcake stones were appraised in the inventories of Thomas Adyn of Heage (appraised 25 December 1634); Henry Bradshaw, gentleman, of Holbrook (appraised 26 November 1679); William Johnson, scythe-grinder of Makeney (appraised 3 April 1647). John Lichfield, yeoman, of Heage (appraised 30 November 1664) had a backstone.

¹⁷⁹ Vaisey (ed.), *Probate Inventories of Lichfield and District*, p. 22. The inventories valuing peas or beans were: LRO: B/C/11, inventory of Roger Hodgkinson, yeoman, of Duffield (appraised 8 June 1639), nine acres of 'pease and oats' £9; inventory of Anthony Street of Belper Ward (appraised 30 July 1636), corn, peas and oats £8; inventory of John Hanson of Heage (appraised 19 September 1660), wheat, blendcorn, oats and peas £6 10s; Henry Stokes, gentleman, of Windley (appraised 15 June 1665), oats and peas £8; John Stables alias Baker, yeoman, of Duffield (appraised 10 June 1634) two acres of blendcorn, two acres of beans and oats £6.

ranged from 4s to £60, confirming that those inhabitants who cultivated arable land ranged from individuals who were growing crops for subsistence to those who were supplying the market on a large scale.¹⁸⁰

xiii. Pastoral farming

In 1581, duchy surveyors reported that many Duffield tenants dwelling within the Frith were ‘pore men living chiefly upon the relief of the pasturage of the commons for their cattail & shepe’.¹⁸¹ Clearly these ‘pore’ people were not simply wage-dependent labourers or artisans but, at least partly, animal-husbandmen.¹⁸² Evidence in the seventeenth-century inventories suggests that the majority of inhabitants owned at least one cow and/or some sheep, although the extent to which individual inhabitants depended on these animals varied greatly: some were engaged in dairy farming and/or stock-rearing, whether cattle or sheep, others kept animals solely for their family’s subsistence.¹⁸³ Manorial tenants at Duffield had ample opportunity to graze animals. From the survey compiled in 1634, it is clear that most of them held land suitable for grazing; in addition, all tenants possessed legal access to grazing in

¹⁸⁰ LRO: B/C/11, inventory of Grace Brett, widow, of Wiverslough (appraised 22 April 1675) hay and corn, sown and unsown (4s); inventory of George Gregson of Turnditch (appraised 21 September 1670) hay and corn (£60).

¹⁸¹ TNA: PRO: DL44/305, f.13.

¹⁸² Compare this with Buchanan Sharp’s findings that many of the inhabitants of the West Country forests of Gillingham, Braydon and Dean were rural artisans and labourers. (Sharp, *In Contempt of All Authority*, Chapter 5, ‘The Participants in the Western Rising’, *passim*.) The impact of parliamentary enclosure on tenants of common-right cottages and their ability to graze a cow on common land is discussed by both Neeson and Shaw-Taylor. (Neeson, *Commoners*; L. Shaw-Taylor, ‘Parliamentary Enclosure and the Emergence of an English Agricultural Proletariat’, *Journal of Economic History*, 63 (2001), pp. 640-62; L. Shaw-Taylor, ‘Labourers, Cows, Common Rights and Parliamentary Enclosure: the Evidence of Contemporary Comment c. 1760-1810’, *Past & Present*, 171 (2001), pp. 95-126.)

¹⁸³ Out of 211 Duffield probate inventories, seventy (32 per cent) do not value sheep but only thirty-six (16 per cent) do not value cows and only twenty-eight (13 per cent) do not value either sheep or cattle. Although inventories were not made of the goods of the ‘poor’, those with both cattle and sheep in their inventories include two weavers, three websters, two nailers, two scythestone makers, one scythe-grinder and one labourer. Neither of the colliers had any sheep, but one had one cow and the other six.

the Frith and other inhabitants enjoyed use-rights there.¹⁸⁴ As we shall see, the extent to which both *de jure* and *de facto* rights were curtailed by enclosure was the main bone of contention between the commoners and the duchy.

Fitzherbert considered sheep to be the most profitable livestock that a man could have.¹⁸⁵ Sixty-nine Duffield inhabitants had flocks of twenty or more sheep, nine of which contained over 100.¹⁸⁶ Given that those Duffield men wealthy enough to own sizeable flocks of sheep were manorial tenants, they would have retained access to parts of the Frith after enclosure. Indeed, analysis of flock sizes confirms that they did not decrease between 1635 and 1642, when the enclosure fences were in place.¹⁸⁷ However, even though they still had legal access to parts of the Frith, some of these farmers objected to the restrictions imposed on their pastoral activities by the enclosures. In 1642 Edward Ridge, whose flock comprised sixty sheep in 1644, was one of those accused of breaking the fences.¹⁸⁸ When Roger Bruckshaw died in January 1642, he owned 340 sheep. In his will drawn up a month earlier, he had bequeathed his brother John all but forty-four of those sheep and all his 'estate right and title of all [his] freehold lands in the county of Derby', providing John with ample land to pasture his sheep.¹⁸⁹ And yet, John Bruckshaw was another of those

¹⁸⁴ We have already seen how Duffield inhabitants clung tenaciously to their customs, in particular rights to pasture their animals, both sheep and cattle, in the Frith.

¹⁸⁵ Cited in Fussell, 'Four centuries', p. 3.

¹⁸⁶ For example, LRO: B/C/11, inventories of George Pole, esquire, of Heage, 565 sheep valued at £190 (appraised 7 April 1674); William Cockerham of Walton, 119 sheep (appraised 25 May 1633); Roger Hodgkinson of Duffield, 136 sheep (appraised 1 February 1639); Matthew Smith of Hazelwood, 152 sheep (appraised 11 July 1673); Roger Bruckshaw of Dalley, gentleman, 340 sheep (appraised 13 January 1642).

¹⁸⁷ From 1625 until 1634 fifteen inventories valued flocks of over twenty sheep, as did seventeen inventories from 1635 to 1642.

¹⁸⁸ LRO: B/C/11, inventory of Edward Ridge of Heage (appraised 28 December 1644).

¹⁸⁹ LRO: B/C/11, will of Roger Bruckshaw of Dalley, gentleman, (written 21 December 1641, probate granted 17 June 1642).

accused of rioting in the Frith: like Edward Ridge, he may not have relied upon the Frith for survival but he clearly used it, or intended to use it, for commercial gain.¹⁹⁰

Whilst it is arguable that anyone who had an inventory drawn up was not considered poor by their contemporaries, some of the Duffield inventories clearly relate to relatively poor people. Of the thirty-nine inventories valued at less than £20, fifteen valued sheep, with flock sizes ranging from two to thirty-six. Some of these people, such as Richard Brizard and Henry Matkyn, held land in the manor and so were legal commoners.¹⁹¹ But, as we have seen, lack of land did not preclude animal ownership. Despite some attempts to stop them, it is clear that landless cottagers continued to pasture their animals in the Frith throughout the seventeenth century.¹⁹² People such as widow Elizabeth Ward who had five sheep, Peter Mote who had three and John Johnson who had six must have pastured them there.¹⁹³

Both cattle-rearing and dairying also played an important part in the economy of early modern Derbyshire. Gervase Markham wrote admiringly of the county's cattle, which were 'of stately shape, bigge, round and well buckled in every member, short jointed, and most comely to the eye, so that they are esteemed excellent in the

¹⁹⁰ Bruckshaw's father, Francis, was one of the signatories to the enclosure agreements relating to both Belper and Chevin wards. (TNA: PRO: DL44/1117, documents 4, 5, 6 and 7.) Several of those accused by Edward Syddenham of rioting were specifically singled out as heirs of those who had signed the agreements, including 'John Bruckshawe of Dalley in the said county of Derby gentleman sonne and heire of the said Francis Bruckshaw deceased'. (TNA: PRO: DL1/370, information presented by Attorney General Beddingfield on relation of Edward Syddenham, 16 May 1642.)

¹⁹¹ In 1671 Richard Brizard was renting one acre and one rood of land in two different fields in Belper with 'common ... belonging to them', which would have entitled him to common his thirty-six sheep. (LRO: B/C/11, will and inventory of Richard Brizard of Belper, webster (probate granted dated 2 May 1673).) Similarly, at about the same time, Henry Matkyn who had ten sheep also possessed 'two acres of arable ground lying in Ditchfallow Field'. (LRO: B/C/11, will and inventory of Henry Matkyn alias Cartwright of Duffield, weaver (probate granted 22 April 1671).)

¹⁹² As we have seen, in the early 1630s, the signatories to the enclosure agreements requested a commission to examine the title of all who claimed common in the Frith so that those without legal rights could be barred. (TNA: PRO: DL44/1117, documents 4, 6 and 8.) Such a commission was never, in fact, implemented and from the events that followed it is clear that inhabitants continued to use the Frith regardless of the legality of their commoning.

¹⁹³ LRO: B/C/11, inventory of Elizabeth Ward of Belper, widow, five sheep (appraised 1 January 1661); inventory of Peter Mote of Toadmire, three sheep (appraised 25 February 1629); inventory of John Johnson of Duffield Bank, six sheep (appraised 1 December 1670).

Market'.¹⁹⁴ In *The Surveior's Dialogue*, John Norden drew attention to the rich grazing grounds on the banks of the river Dove.¹⁹⁵ Joan Thirsk found that 'in Derbyshire the stock-rearing, cattle-feeding region lay in the central sector of the county. The Dove valley, praised by Norden, and the Derwent valley were the celebrated feeding grounds'.¹⁹⁶

It has been observed that dairying was particularly encouraged by the proximity of towns.¹⁹⁷ Derby, only four miles distant, provided Duffield inhabitants with a ready market for their cheese and butter. Overton has noted that commercial dairying is difficult to identify since most households that engaged in butter- and cheese-making would have sold at least some of their produce in the marketplace.¹⁹⁸ He has therefore calculated a scale of production relating to the number of cows owned and the quantity of butter and cheese produced: four milk cows, or butter and cheese valued at more than £1, would indicate commercial dairying. 'Such a scale of operation', he suggests, 'would have produced a small but consistent surplus.' At least seventy-six Duffield inventories specifically valued four or more cows, the largest dairy herd being that of Henry Harrison, with twenty.¹⁹⁹ Clear evidence of dairying based on cheese and/or butter values can be found in nineteen inventories.²⁰⁰

¹⁹⁴ Gervase Markham, *Cheape and Good Husbandry* (1631), p. 88, cited in Fussell, 'Four centuries', p. 9.

¹⁹⁵ Cited in Fussell, 'Four centuries', p. 9. (No reference is given to the relevant page in Norden's work.) The Dove flowed through Ashbourne, about twelve miles from Duffield.

¹⁹⁶ Thirsk, 'Farming regions of England: The West Midlands', p. 103. The Derwent flowed through the east of the parish of Duffield.

¹⁹⁷ P. R. Edwards, 'The development of dairy farming on the North Shropshire plain in the seventeenth century', *Midland History*, 4 (1978), p. 180.

¹⁹⁸ Overton *et al.*, *Production and Consumption*, p. 53. Overton's calculations were based on observations by Markham, writing in the 1650s, who reckoned that a cow grazing on fertile pastures such as those in the Wiltshire Vales could produce 300-400 pounds of cheese per season, with the price fluctuating around 3d to 4d pence per pound, giving a total value of some £4 5s. (Markham was quoted in A. R. Wilson, *Forgotten Harvest: the Story of Cheesemaking in Wiltshire* (Calne, 1995), pp. 57-58, 93.)

¹⁹⁹ LRO: B/C/11, inventory of Henry Harrison of Windley Hill, yeoman (appraised 18 December 1669).

²⁰⁰ For example, in 1631, Anthony Milnes had butter, cheese and a chest together worth £4; in 1661, William Blackwell had seventy cheeses valued at £4 10s; and in 1674, Roger Billinge had thirty-five

At Duffield, herds of fewer than five cattle were simply dairy herds, comprising cows and calves or heifers. Herds of five or more cattle included other beasts, such as bullocks or twinters: their owners were, therefore, likely to have been engaged in stock-rearing as well as dairying.²⁰¹ Of the 108 inventories listing such herds, seventeen had twenty or more cattle. Since such beasts were expensive, it is hardly surprising that inventories with high values included large herds.²⁰² Men engaged in stock-rearing held land on which to pasture their cattle and also had access to the Frith.²⁰³ As with sheep-farming, ownership of large herds did not decrease when the enclosures were in place: five of the seventeen 'stock-rearing' inventories date between 1625 and 1634 and five between 1635 and 1642. But some men, rather than use their legal entitlement in the enclosed two-thirds, reverted to old habits. In May 1634 many commoners completely ignored the divisions and put their animals to pasture within the enclosures in a bid to continue past practices.²⁰⁴ These men were determined to exercise their right of pasture in the accustomed places rather than take their cattle elsewhere.²⁰⁵ The duchy ordered that from thenceforth anyone intruding in the enclosures should be fined.²⁰⁶ Eventually a

cheeses worth £2. (LRO: B/C/11, inventories of Anthony Milnes of Tumditch (appraised 13 December 1631); William Blackwell of Dalley (appraised 11 September 1661); Roger Billinge of Shottle Park (appraised 8 October 1674).)

²⁰¹ Appraisers in Duffield did not always specify the type of cattle being valued: some simply classified them as 'beasts' but others differentiated between kine (cows), calves, heifers, bullocks, twinters (cattle 'two winters' old), stirks (bullocks or heifers between one and two years old), oxen and steers (young oxen).

²⁰² Inventories valuing over twenty head of cattle include: LRO: B/C/11, Henry Stokes of Windley, yeoman (appraised 10 February 1640); Roger Bruckshaw of Duffield, gentleman (appraised 12 January 1642); Henry Harrison of Windley Hill, yeoman (appraised 18 December 1669); George Pole of Heage, esquire (appraised 7 April 1674).

²⁰³ For example, William Stables had 'landes, medowes, pastures and fedinges within the pareshe of duffeld'; Henry Stokes held various lands and tenements in Windley and Duffield. (LRO: B/C/11, will of William Stables (dated 30 August 1625); will of Henry Stokes of Windley, yeoman (dated 2 February 1640).)

²⁰⁴ Unfortunately the record of these intrusions is very vague and neither names the offenders nor the wards concerned. The former were probably too numerous. (TNA: PRO: DL5/31, f.567v, 10 May 1634.)

²⁰⁵ These incidents are reported in TNA: PRO: DL5/31, f. 567v, 10 May 1634.

²⁰⁶ The rates were to be 1s per twenty-four for every sheep or smaller beast and 5s for every horse, ox or cow.

compromise was reached: considering the infertility of the soil, rather than cultivate their enclosures, some tenants permitted commoners to *pay* to pasture their cattle there and, indeed, many of them did so.²⁰⁷

Farmers with large herds kept animals as part of a commercial venture that provided their income; those people with only one or two cows kept them to supply their family's needs.²⁰⁸ Indeed, the milk and dairy products provided by these animals were vital for the sustenance of poor families.²⁰⁹ Twenty of the Duffield inventories listed only one cow and seventeen listed just two.²¹⁰ Overton suggests that people with either one or two cows were likely to be smallholders with access to grazing, perhaps on common land.²¹¹ Some of these thirty-seven people were indeed landholders and so were legal commoners in the Frith.²¹² However, not all those with one or two cows at Duffield were necessarily landholders: poor landless members of the community who possessed a cow commoned it in the Frith by

²⁰⁷ TNA: PRO: E134/1659/East27, deposition of Adam Mullin of Duffield, yeoman, 28 March 1659. The practice of agistment began in about 1635.

²⁰⁸ For the value to the household economy of keeping a cow, see the work of both Jane Humphries and Leigh Shaw-Taylor. (Jane Humphries, 'Enclosure, Common Rights, and Women: the Proletarianization of Families in the Late Eighteenth and Early Nineteenth Centuries', *Journal of Economic History*, 50 (1990), pp. 17-42; Shaw-Taylor, 'Parliamentary Enclosure'.) Of the 221 Duffield inventories analysed, only thirty-six (16 per cent) valued no cattle at all. As the value of these inventories ranges from £2 to £515 19s 3d, it is clear that poverty was not the only reason for not possessing a cow.

²⁰⁹ In the late-eighteenth century the poor valued the benefits that they derived from their cows at around 5s or 6s per week, which compares favourably with agricultural labourers' weekly wages of around 7s to 8s per week. (Humphries, 'Enclosures, Common Rights, and Women', p. 24).

²¹⁰ The values of these thirty-seven inventories ranged from £6 18s 4d to £117 14s 8d. Of these, the twenty inventories listing only one cow had a median value of £25 17s 7d. They ranged from the inventory of George Smith of Belper (appraised 31 May 1628), valued at £6 18s 4d to the inventory of William Ridge of Heage, husbandman (appraised 22 October 1675), valued at £95 8s 10d. The seventeen inventories listing two cows had a median value of £26 9s 4d (inventory of William Johnson of Makeney, scythe-grinder (appraised 17 February 1647)). They ranged from the inventory of Joan Smith of Turnditch (appraised 10 June 1645), valued at £9 6s 8d to the inventory of Thomas Brown of Belper, miller (appraised 4 April 1670), valued at £117 4s 8d.

²¹¹ Overton *et al.*, *Production and Consumption*, p. 41.

²¹² It is not possible to identify the landholding of any of these thirty-seven people in the survey made in 1634, not least because it relates to landholding in 1625 and most of the relevant inventories date from the late 1630s onwards. However, from the inventory of George Bradshaw, for example, it is clear that he had legal access to common pasture for his cow as he held arable land in the parish. (LRO: B/C/11, inventory of George Bradshaw of Duffield (appraised 25 February 1632): hay and corn valued at £1 13s 4d.)

prescription.²¹³ In theory the enclosures would have prevented them from grazing their cows in the Frith but in practice grazing seems to have continued as previously.²¹⁴ From both this discussion of cow-keeping and the earlier discussion of sheep-grazing, it is clear that access to the Frith, whether claimed as *de jure* or *de facto* common rights, was of fundamental importance for the economic life of Duffield's inhabitants.

xiv. Dual-economy households

Although Duffield was a large rural parish, forty-eight (21.7 per cent) of its 221 extant inventories state explicitly or implicitly that the deceased had been engaged in a non-farming occupation, craft or trade (see Table 2:8 overleaf).²¹⁵ Some of these occupations, such as collier, miner, nailer, scythestone maker and wire-drawer, were dependent on the plentiful mineral resources within the parish; others, such as carpenter, cooper, joiner, and woodmonger, on wood resources; the remainder, for example, smith, tanner and miller, were those usually found in urban centres. Analysis of these forty-eight inventories shows thirty-eight of them (17.2 per cent of the total) value animals and/or crops, thus indicating the presence of either subsistence farming or dual-employment in the parish.²¹⁶

²¹³ See the debate between Neeson and Shaw-Taylor concerning the availability of access to commons that enabled individuals to keep a cow and so maintain themselves. (Neeson, *Commoners*; Shaw-Taylor, 'Parliamentary Enclosure'; Shaw-Taylor, 'Labourers, Cows, Common Rights'.) Few of the points raised in this debate apply to Duffield, however, since Neeson and Shaw-Taylor were referring to *de jure* commoners grazing their cow in strictly limited areas of common pasture or of common fields left fallow, whereas the Frith was a vast common waste sufficiently large to support both *de facto* and *de jure* commoners.

²¹⁴ Between 1635, when the enclosures were erected, and 1642, when they were torn down, seven inventories valued only one or two cows.

²¹⁵ In addition to this, one 'husbandman' possessed a weaver's 'shop' and three of the yeomen had evidence of trades in their inventories (metal-working, tanning and woodworking).

²¹⁶ Anne Kussmaul has argued that using inventories to identify those who were dual-employed has exaggerated the extent of such employment since many people who were not dual-employed were consequently too poor to make a will and have an inventory taken. (Anne Kussmaul, *A General View of the Rural Economy of England, 1538-1840* (Cambridge, 1990), p. 10, cited in Arkell, 'Interpreting Probate Inventories', p. 80.)

Table 2:8. Occupations and farming categories in Duffield probate documents

Stated occupation	0farm	1anim	2crop	3past	4mix	5past	6mix	Total
status/farming								
bachelor	0	0	0	0	1	0	0	1
esquire	0	0	0	0	0	0	1	1
gentleman	2	0	0	0	0	0	6	8
husbandman	1	2	2	2	2	0	39	48
labourer	0	1	0	0	0	1	0	2
spinster	1	0	0	2	0	0	0	3
widow	3	1	0	4	1	3	10	22
yeoman	6	0	0	0	1	6	37	50
trade/craft								
baker	0	0	0	0	0	0	1	1
blacksmith/smith	1	0	0	0	1	0	1	3
carpenter	0	0	0	0	1	0	1	2
carrier	0	0	0	0	0	0	1	1
chapman	1	0	0	0	0	0	0	1
collier	0	0	0	1	0	1	0	2
cooper	0	0	0	0	0	1	0	1
fellmonger	0	0	0	1	0	0	0	1
glover	0	0	0	0	0	0	1	1
joiner	0	0	0	1	0	0	0	1
mason	0	0	0	0	0	0	2	2
mercier	0	0	0	1	0	0	0	1
millar	1	0	0	2	0	0	0	3
miner	1	0	0	0	0	0	0	1
nailer	0	0	0	0	0	1	1	2
schoolmaster	0	0	0	0	0	0	1	1
scythe-grinder	0	0	0	0	1	0	0	1
scythestone maker	0	0	0	1	0	0	1	2
shoemaker	0	0	0	0	0	0	2	2
tailor	0	0	0	0	0	0	4	4
tanner	0	0	0	0	0	0	2	2
weaver/webster	0	0	0	2	1	0	3	6
wire-drawer	0	0	0	1	0	0	0	1
woodmonger	0	0	0	0	0	1	0	1
non specific or implied								
blacksmith	0	0	0	0	0	0	1	1
metalworker?	1	0	0	0	0	0	0	1
tradesman/craftsman	0	0	0	0	0	0	1	1
weaver	0	0	0	1	0	0	1	2
gender								
male	3	0	1	7	7	3	14	35
unmarried woman	1	0	0	0	0	0	0	1
widow	0	0	0	1	0	0	1	2
Totals	22	4	3	27	16	17	132	221

Source: LRO: B/C/11 wills and inventories from Duffield parish, 1625-1680

In her study of the parish of Eckington in north-west Derbyshire, Kathleen Battye suggests that ‘humble nailers’ and other lowly craftsmen practised subsistence farming whereas more prosperous and successful metalworkers had dual occupations, the difference being whether their farming activities simply sustained their family or supplied the market as well.²¹⁷ At Duffield, the distinction is not so clear-cut. Many of the prosperous Duffield craftsmen such as smiths and tanners were indeed also wealthy farmers.²¹⁸ For example, the tanner William Swift, as well as £27-worth of leather, had sixty-one sheep and four cattle valued at £26 and £4-worth of corn.²¹⁹ If we accept Overton’s definition of commercial dairying, however, it is clear that some ‘lowly craftsmen’ were also supplying the market.²²⁰ For example, George Storer, a nailer, had four cows, two heifers and a calf; Robert Cartwright, a weaver, had four cows and a calf, as well as sheep and corn.²²¹ Others, however, were indeed subsistence farmers, such as Timothy Leeke, a carpenter, whose farming stock comprised just two cows, eighteen strikes of oats and two stones of flax.²²²

²¹⁷ Kathleen M. Battye, ‘Probate records as a source for the study of metal-working in Eckington 1534-1750’, *DAJ*, 119 (1999), pp. 297-328, particularly p. 322. In his survey of inventories of West Midlands metal-workers, Rowlands found that, of those metal-workers who practised husbandry, ‘scythe-makers’ had the highest proportion of land and/or livestock, nailers followed, with usually only one or two acres, and others, such as locksmiths and lorimers, concentrating on their industrial work. (M. B. Rowlands, *Masters and Men* (Manchester, 1975), pp. 41-43.)

²¹⁸ Research by both Pauline Frost and David Hey has revealed that many metal-workers also practised farming. (P. Frost, ‘Yeomen and metalsmiths: livestock in the dual economy in south Staffordshire, 1560-1720’, *Agricultural History Review*, 29 (1981), pp. 29-41; D. Hey, ‘A dual economy in south Yorkshire’, *Agricultural History Review*, 17 (1969), pp. 108-19; Hey, *Rural Metalworkers*, *passim*.) Wealthy smiths in Duffield parish included Francis Robinson and Richard Barker. (LRO: B/C/11, inventory of Francis Robinson of Belper, blacksmith (appraised 7 May 1633), total value £75 0s 1d; inventory of Richard Barker of Wildersley, Duffield (appraised 9 May 1660), total value £84 4s 10d.)

²¹⁹ LRO: B/C/11, inventory of William Swift of Belper, tanner (appraised 27 January 1658), total value £101 1s 0d.

²²⁰ He has suggested that four cows or cheese and/or butter valued at £1 or more. (Overton *et al.*, *Production and Consumption*, p. 53.)

²²¹ LRO: B/C/11, inventory of Robert Cartwright alias Matkyn of Shottle, webster (weaver) (appraised 3 July 1630), total value £27 13s 4d; inventory of George Storer of Bradley Laund, nailer (appraised 10 January 1661), total value £31 9s 0d.

²²² LRO: B/C/11, inventory of Thomas Leeke (appraised 23 May 1633), total value £22 0s 3d.

The presence of dual-economy households in Duffield can be interpreted in at least two ways. Either, the craftsmen and artisans could not depend on their stated occupation to satisfy their economic needs but needed to use the benefits of the Frith to supplement the income from their craft or trade in order to sustain their family. Or, the availability of ample common pasture in the Frith meant that they did not have to rely on their occupation for their income but could maximise their household earnings by using the benefits of the Frith as well. Concluding his analysis of by-employment, Overton notes that some economic historians have assumed that 'by-employment is indicative of a risk-averse peasant mentality, undertaken because of chronic insecurities in pre-industrial occupations income', but in fact such an assumption requires dramatic modification.²²³ Although the income of some artisans, such as weavers, was indeed subject to the vagaries of the export market, the income of those workers whose production activities supplied local needs was much more secure. 'Thus', Overton concludes, 'in some cases by-employment was a means of maximising household income rather than avoiding risk'. Since most of those Duffield householders who had dual-employment *were* supplying goods and services to meet local demand, it is arguable that many of these men were using the Frith to maximise their income rather than simply to make ends meet.

Although David Hey did not intentionally make Duffield the junction of three of his suggested farming regions of the north-west Midlands, the inventories from the parish throughout the period 1625 to 1680 certainly show that inhabitants' agricultural and pastoral activities do not fit easily into any particular one of these regions. Corn-growing, dairying, cattle-rearing, sheep-farming, subsistence-farming

²²³ Overton *et al.*, *Production and Consumption*, p. 77.

and industries all occurred there. Although, by the very nature of inventories, data produced from them is skewed towards the wealthier members of a community, nevertheless some of the Duffield inventories did value the goods of lowly labourers and artisans, goods that included livestock of some kind in most instances. Other evidence, particularly jurors' responses recorded in manorial surveys, confirms the importance of commoning in the extensive Frith to both commercial farming and household economies. Hearth Tax assessments indicate that this growing forest community, rather than being 'locked in poverty', had a surprisingly prosperous economic profile. Many of its inhabitants, therefore, could afford to sustain legal, as well as physical, opposition to the crown's attempts to appropriate the benefits of the Frith. Indeed, the commoners' active and well-documented defence of their customs during the 1580s should have warned the crown to leave well alone. Given both the importance of the Frith to the local economy and the commoners' knowledge of their customary rights, it is scarcely surprising that, when the crown's officials sought to nourish its ailing finances by milking Duffield's assets, the commoners offered spirited and sustained resistance.

Chapter 3: Early modern Whittlesey: geography, demography and economy

Now that we have considered the size and social structure of the local population in and around Duffield Frith and how the inhabitants made their living, we must turn our attention to the people of Whittlesey. Like that of the former royal forest, the fenland landscape appeared to be ripe, and eminently suitable, for improvement but, as we shall see, projectors failed to understand the geology of that landscape, a failure that was to prove exceedingly costly. These outsiders, like the royal policy-makers who attempted to exploit the assets of Duffield Frith, also misjudged the apparent indolence of the local population. In order to understand how this misjudgement arose, and also to understand the fenmen's reactions to the enclosure of their former commons, it is necessary to explore the nature of the local economy and social structure.

i. The landscape of the fens

The fens cover approximately 1,300 square miles, stretching at their greatest extent about seventy-five miles from Lincoln in the north to near Cambridge in the south, and about thirty-six miles from Brandon in the east to Peterborough in the west.¹ The nature of the surface soil is not uniform: land lying within roughly twelve miles of the modern coastline is silt-fen, the remainder peat.² Before drainage, because

¹ The formation of the fenland is described in H. C. Darby, *The Changing Fenland* (Cambridge, 1983), pp. 1-5; *idem*, 'The Human Geography of the Fenland before the Drainage', *The Geographical Journal*, 80 (1932), pp. 420-35; H. Godwin, *Fenland: its ancient past and uncertain future* (Cambridge, 1978), pp. 33-91; S. J. B. Skertchley, *The Geology of the Fenland* (London, 1877).

² Darby provides two complementary maps of the silt and peat areas: 'The Fenland: peat and silt areas, 1877' (Darby, *Changing Fenland*, p. 3) and 'Surface deposits of the Fenland and distribution of Domesday Villis' (Darby, 'Human Geography', p. 422). One of the reasons for the failure of many of the early modern drainage works was that the engineers rarely took into account the fundamental effects of drainage: when drained both types of fen shrank, peat much more so than silt, causing the ground level to fall below that of the rivers and drainage ditches. As well as shrinking, the drying peat surface wasted away owing to the activities of bacteria and other organisms. It was not until the

fenlands are flat and low-lying, the area was periodically inundated by high sea tides and by overflowing rivers. Consequently, in addition to those areas that were permanently flooded, many thousands of acres of fen were ‘surrounded’, that is, lay under water, during the winter; some of these areas were also occasionally flooded during the summer. Surrounded grounds were unsuitable for arable farming but provided lush pasture for cattle and other livestock.³ Large tracts of fen lying between various townships were intercommoned by those communities.⁴ Smaller areas of fen lay within the boundaries of individual towns.⁵ Fenland, moreover, did not just provide pasture: the naturally occurring flora and fauna of the undrained fens, such as reeds, sedge, peat, fish and fowl, were exploited by inhabitants both for private use and for sale.⁶ As we shall see, even for landless labourers this was not necessarily a subsistence economy: the abundance of natural resources meant that such people need not live from hand-to-mouth but had the opportunity to participate in the market, albeit on a small scale.

nineteenth century that drainers recognised this and made the necessary allowances. (Darby, *Changing Fenland*, pp. 101-03)

³ For the economy of the silt fenland see J. Thirsk, *Fenland Farming in the Sixteenth Century* (Leicester, 1953); *idem*, *English Peasant Farming: The Agrarian History of Lincolnshire from Tudor to Recent Times* (London, 1957), pp. 6-48, 108-41; *idem*, ‘The Isle of Axholme before Vermyden’, *Agricultural History Review*, 1 (1953), pp. 16-28. Fewer studies have been made of peat fen communities, but for a study of Willingham (Cambridgeshire), see Margaret Spufford, *Contrasting Communities: English Villagers in the Sixteenth and Seventeenth Centuries* (Cambridge, 1974), pp. 121-64. See also J. R. Ravensdale, *Liable to floods: Village landscape on the edge of the fens, A.D.450-1850* (Cambridge, 1974). On its dust-jacket, this book is described as a study of ‘the evolution and destruction of a part of the English landscape ... on the margin of the fens.’

⁴ For example, concerning the fens lying between Whittlesey and Ramsey, in 1677 Richard Oldman stated that ‘the Inhabitants of [the parishes of Whittlesey St Andrew and Whittlesey St Mary] did Intercomon in the said Grounds ... and that Ramsey Parish & Bennett [Benwick] and Fassett [Farcet] did likewise Intercommon in the said Grounds and that there were never any seperation or devisiion in which Parish the said Fenn Grounds Laye nether are the said grounds reputed to Lye in any particuler Parrish ...’. (TNA: PRO: E134/29CarII/East28, deposition of Richard Oldman, 5 April 1677.)

⁵ For example, nearly 3,000 acres of fen lay within the manor of Willingham. (Spufford, *Contrasting Communities*, p. 121.)

⁶ The benefits accruing from the undrained fens are discussed in detail below. (Chapter 3, section ix, ‘Entitlement to common rights at Whittlesey’.) For the variety of resources available from common wastes, see J. M. Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700-1820* (Cambridge, 1993), Chapter 6, ‘The uses of waste’ and D. Woodward, ‘Straw, bracken and the Wicklow whale: the exploitation of natural resources in England since 1500’, *Past and Present*, 159 (1998), especially pp. 48-56.

Those early modern travellers who recorded their journeys through the British Isles tended to comment on people or places that struck them as unusual or interesting. Most visitors considered the fenland an alien landscape and its inhabitants inhospitable and somewhat strange. The area was rarely visited for its own sake but often had to be traversed *en route* to more welcoming destinations. Daniel Defoe described how the fens were ‘frequently overflow’d’ by the ‘extraordinary conflux of waters from all the inland counties of England’. Throughout his fenland journey he longed ‘to be deliver’d from fogs and stagnate air, and the water of the colour of brew’d ale’. He was ‘very glad when [he] got out of ... the fen country; for ’tis a horrid air for a stranger to breathe in’.⁷ From the top of Peterborough Cathedral in 1635, another traveller observed ‘a little Kingdome of Marishes and Fenns, wherein were quarter’d many Regiments of Catell’.⁸ From thence he journeyed ‘over those shaking Quagmires and rotten Fennes’ to Guyhirn, via either Thorney or Whittlesey. The whole region was a ‘large Continent of vast, foggie, miry, rotten, and unfruitfull Soyle’. The inhabitants of the Crowland area were, he said, ‘halfe Fish, half Flesh, for they drinke like fishes and sleep like Hogges’.

Although Darby has cautioned that such writers drew attention to the unusual rather than the norm, it is clear that even sympathetic writers emphasised the differences between the fens and other regions.⁹ In August and September 1611, Isaac Casaubon, a scholar from Europe, recorded observations made whilst

⁷ Daniel Defoe, *Tour through the whole Island of Great Britain* (first published 1724-6), eds G. D. H. Cole and D. C. Browning (London, reprinted 1974 in one volume), pp. 97, 100.

⁸ L. G. Wickham Legg (ed.), ‘A Relation of a Short Survey of the Western Counties, made by a Lieutenant of the Military Company in Norwich in 1635’, in *Camden Miscellany*, 16 (Camden Third Series, 52, London, 1936), pp. 89-92 (ff. 381r-382v in the original).

⁹ Darby, ‘Human Geography’, p. 432.

accompanying the bishop of Ely on a visitation to Wisbech.¹⁰ He saw ‘a marshy place which is covered for the most part by water throughout the winter’ but was nevertheless struck by the wealthy appearance of the area. Amongst other enterprises, he noted the fattening of godwits for the London market; ‘the manufacture of rape seed; [and] the culture of hemp’. Like Casaubon, Michael Drayton also commented on the fertility of region. In his poem ‘Poly-Olbion’, published between 1612 and 1622, he spoke admiringly of the undrained Lincolnshire fens.¹¹ Here was a landscape completely at the mercy of nature, ‘in winter time when all is overflow’d’; ‘in Summer giving Earth from which I square my peat’. But it was also nature’s showcase: he identified more than twenty species of bird living there and demonstrated how inhabitants had adapted their way of life to, and benefited from, the fens:

The toying Fisher here is tewing of his Net:
The Fowler is imployed his lymed twigs to set.
One underneath his Horse, to get a shoote doth stalke;
Another over Dykes upon his Stilts doth walke:
There are others with their Spades, the Peats are squaring out,
And others from their Carres [fens], are busily about,
To draw out Sedge and Reed, for Thatch and Stover fit,¹²

To outsiders, whether sympathetic writers like Drayton or wary observers like Defoe, it was clear that the fens were a unique environment in terms of its geography and economy. The fenlanders themselves knew no other kind of habitat.

¹⁰ I. Casaubon, *Ephemerides*, ed. J. Russell (Oxford, 1850), pp. 864-65, quoted in Darby, ‘Human Geography’, p. 423. Casaubon’s observations in the fens are summarised in M. Pattison, *Isaac Casaubon, 1559-1614* (Oxford, 1875), p. 391.

¹¹ Michael Drayton, *Works*, ed. J. W. Hebel (5 volumes, Oxford, 1931-41), 4, *Poly-Olbion*, pp. 511-16. Drayton’s description of the Cambridgeshire fens is far less detailed. (*ibid.*, pp. 423-24.)

¹² Drayton, *Poly-Olbion*, song 25, lines 139-45. These lines in praise of ‘The pleasures of the Fennes’ have been quoted frequently. See, for example, Darby, *Changing Fenland*, p. 54.

ii. The geography of Whittlesey

The fenland community of Whittlesey, situated in the north-west of the Isle of Ely, some six miles east of Peterborough and eleven miles west of March, lies at the intersection of the route between these two towns and that between Ramsey and Thorney, which continues on to Crowland.¹³ Owing to the geological composition of the fens, much of the land in the region was unable to support buildings of any kind; consequently those settlements that were established grew up on the few gravel 'islands' that emerged from the marshes. Although frequently simply referred to as 'Whittlesey', the community actually comprised three distinct settlements (see Map 3:1 overleaf). The original settlements of Whittlesey and Eastrea were built on two adjacent 'islands', in total some three miles long and half a mile wide, which rose about twenty-six feet above sea level and just nine feet above the surrounding peat fens.¹⁴ A third settlement named Coates, on the east of Eastrea, had become established by the thirteenth century.¹⁵

Whittlesey comprised two large and valuable manors, Whittlesey St Mary and Whittlesey St Andrew. During the medieval period, the former was held by the Abbot of Thorney and the latter by the Prior of Ely.¹⁶ Following the Dissolution, the manors were leased to different men but by the 1590s they were both held in trust by Thomas Cecil, earl of Exeter, for his daughter, Lady Elizabeth Hatton.¹⁷ They were not formally entrusted to Exeter until 1603 but by then they had already formed part

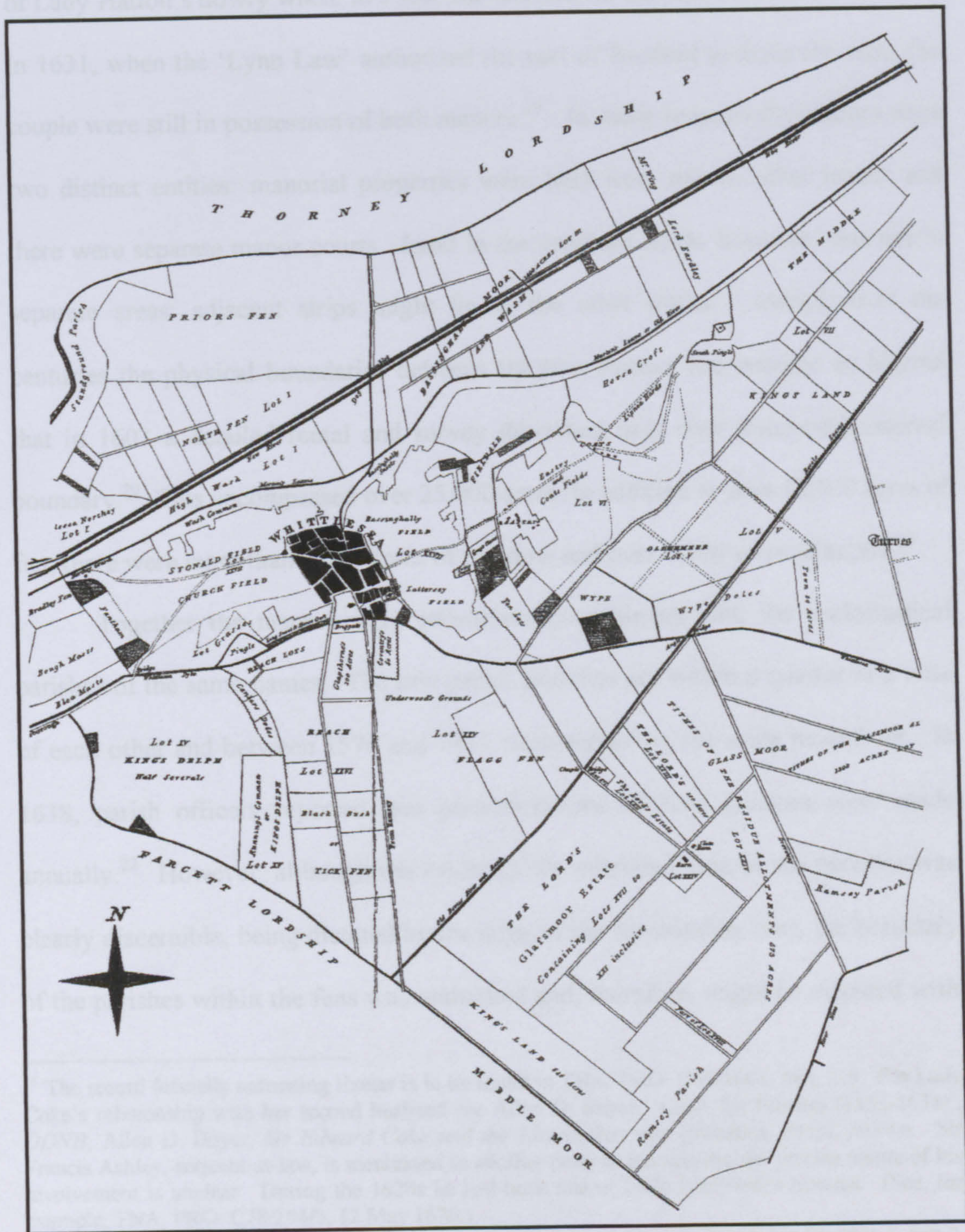
¹³ Except where noted otherwise, the following paragraphs summarise *VCH Cambs*, 4, pp. 123-35.

¹⁴ The names 'Whittlesey' and 'Eastrea' refer to the islands; the former being derived from 'Witel's ey' (Witel's island) and the latter from 'easterra ey' (the easterly island). (P. H. Reaney, *The Place-Names of Cambridgeshire and the Isle of Ely* (Cambridge, 1943) pp. 258-59.)

¹⁵ 'Coates' is derived from 'cotes' meaning 'cottages' and was situated at the eastern end of the common fields. The name first appears in documents in 1280. (Reaney, *Place-Names*, p. 264.)

¹⁶ The manor of the rectory of St Mary's was sometimes referred to as the Coquinary but this was a very small manor and in most manorial documents it was subsumed in Whittlesey St Mary.

¹⁷ The account of the manors during the later sixteenth century in *VCH Cambs*, 4, is somewhat unclear.



Map 3:1. The fields and fens of Whittlesey

(based on CUL: MS Plan 554, c.1800)

of Lady Hatton's dowry when, in 1598, she married Sir Edward Coke of Godwick.¹⁸ In 1631, when the 'Lynn Law' authorised the earl of Bedford to drain the fens, the couple were still in possession of both manors.¹⁹ In many respects the manors were two distinct entities: manorial properties were held from one or other manor and there were separate manor courts. Land in the common fields, however, was not in separate areas: adjacent strips might lie in the other manor. Indeed, over the centuries the physical boundaries between the two manors had become so blurred that in 1603 a detailed rental and survey described only their combined external boundary.²⁰ This encompassed over 25,000 acres: in addition to over 18,500 acres of fen, there were more than 5,000 acres of meadow and over 1,500 acres of arable.²¹

Together the manors were effectively coterminous with the ecclesiastical parishes of the same names. The two parish churches are within a quarter of a mile of each other and between 1570 and 1815 were served by the same incumbent. In 1638, parish officers reported that perambulations of both parishes were made annually.²² However, although the extent of the inhabited area of the parishes was clearly discernible, being dictated by the edge of the surrounding fens, the boundary of the parishes within the fens was unmarked and, therefore, might be disputed with

¹⁸ The record formally entrusting Exeter is to be found in TNA: PRO: C66/1603, mm. 1-5. For Lady Coke's relationship with her second husband see Allen D. Boyer, 'Coke, Sir Edward (1552-1634)', *ODNB*; Allen D. Boyer, *Sir Edward Coke and the Elizabethan age* (Stanford, 2003), *passim*. Sir Francis Ashley, serjeant-at-law, is mentioned as another party to the sale but the precise nature of his involvement is unclear. During the 1620s he had been one of Lady Elizabeth's trustees. (See, for example, TNA: PRO: C78/294/3, 12 May 1626.)

¹⁹ For an account of the sale of the manors soon after the Lynn Law was passed, see Chapter 5, part 2, section i, 'The 1630s: Change in the Whittlesey manors'.

²⁰ Presumably the survey, together with accompanying rental and field book were drawn up when the manors were formally entrusted to Exeter. (CUL: Add MS 3826, 'The Survey of the Mannours of Whittlesey St Maries and Whittlesey St Andrews Together with a Rental; and the Terror or Feild Book of the Said Manours', dated 1603, f. 4r, survey of the manors.)

²¹ The exact acreages are 18,689 acres of fen, 5,495 acres of meadow and pasture, and 1,573 acres of arable fields, giving a total of 25,757 acres. (CUL: Add MS 3826, ff. 5r-6v.)

²² In 1638 the churchwardens and sidemen of St Mary's reported that 'Our vicar and curate usually every year in Rogation week go with our neighbours the perambulation, saying the prayers and suffrage for the same appointed'; the report of the officers of St Andrew's was exactly the same. (*Transactions of the Cambridgeshire and Huntingdonshire Archaeological Society*, 4 (Ely, 1930), pp. 338-40.)

other parishes.²³ Nevertheless, given the vast acreage of fen in Whittlesey, there was more than enough to supply the economic needs of the inhabitants. Early modern improvement writers and legislators believed that such communities were overpopulated by the idle poor, who would fill their time far more profitably by cultivating drained land.²⁴ But was this an accurate picture of the population of Whittlesey? Were the inhabitants indeed numerous and are there any indications that many of them were poor?

iii. The demography of Whittlesey, 1523 to 1676

Given the frequent mismatch of parish and manorial boundaries, the erratic survival of sources and the vexed question of suitable multipliers, the quest for a series of population estimates for an early modern community is littered with obstacles. This aspect of Whittlesey's history is, however, slightly less complex than for many other communities since each of the three settlements of Whittlesey, Eastrea and Coates was nucleated, not least due to the constant threat of flooding beyond the islands. Indeed, only after drainage in the seventeenth century were any houses built in the fens, and these were few. Unlike their counterparts who visited Duffield, where inhabitants dwelt in various hamlets scattered throughout the Frith and surrounding area, taxation assessors at Whittlesey, proceeding along the various streets listing the

²³ In 1676, aged deponents stated that they could not remember any perambulations ever being made around the fens that were intercommoned by Whittlesey and Ramsey nor boundary markers ever being set out there. Both communities claimed access to the large area of fen that lay between the two towns: to Whittlesey inhabitants it was known as 'Glass More' and to Ramsey inhabitants as 'Ramsey Kinges Delfe'. The identity of those who exercised rights in such areas came under close scrutiny when payment of tithes was in dispute. (TNA: PRO: E134/27CarII/Mich30.)

²⁴ See, for example, the arguments put forward in favour of drainage in TNA: PRO: SP16/339/27, (undated). This document was originally calendared to 1636 but Kennedy has suggested that it was actually written in 1605. (Mark Kennedy, "'So glorious a work as this draining of the Fens': the impact of royal government on local political culture in Elizabethan and Jacobean England", (unpublished PhD thesis, Cornell University, 1985), p. 114, n. 64.)

names of those liable or exempt, could be reasonably certain that no-one had been omitted.²⁵

As the boundaries of the two Whittlesey parishes and manors were coterminous, it is reasonable to assume that estimates based on civil taxation returns, compiled by township, and those based on ecclesiastical ‘censuses’, reported by parish, refer to the same population centres. This allows consistent analysis of the four national reference points in the demographic history of early modern Whittlesey: the returns of the Lay Subsidy granted in 1523; the ecclesiastical census of 1563; the Hearth Tax returns of Lady Day 1674 (hereafter 1674L); and the Compton Census of 1676.²⁶ The significant interval caused by the absence of the Ely returns to the 1603 Diocesan Census can be partially filled using two local sources: a rental drawn up in 1603 and a 1638 Exchequer decree that allocated allotments in the drained fen.²⁷ Whilst it is true that the latter two listings do not account for all households within the manors at those times, they do provide useful pointers in an otherwise unmarked landscape. Analysis of the bishops’ transcripts, moreover, gives some indication of population trends during the period 1600 to 1669.²⁸ Finally,

²⁵ See Chapter 2, section iii, ‘Counting the parishioners of Duffield’ for the discussion of Duffield’s population and the inconsistencies between the various assessments due to the omission of various settlements by assessors. The long list of Whittlesey tenants whose commonable cottages qualified for an allotment at enclosure vividly conveys the close proximity their dwellings in Whittlesey’s streets. (TNA: PRO: E125/24, p. 314, ff. 14v-26r.) After enclosure those houses that had been built in the drained fens were clearly visible since the area was flat and devoid of established trees. As we shall see, however, numerous inhabitants were less than honest with the 1662 Hearth Tax assessors regarding the number of hearths within their dwelling.

²⁶ Aspects of the 1662 and 1664 Hearth Tax returns will be discussed below but, for reasons that will become clear, have not been used for population estimates. (Chapter 3, section iv, ‘Population figures from central records’ and section vii, ‘The wealth of the community: indicators in the Hearth Tax’.)

²⁷ Coincidentally, the 1603 returns for the diocese of Coventry and Lichfield, in which Duffield lay, have not survived either. The 1563 and 1603 returns have been edited and transcribed in Alan Dyer and D. M. Palliser (eds), *The Diocesan Population Returns for 1563 and 1603* (London, 2005).

²⁸ Parish registers do not begin until 1653 for St Andrew’s and 1683 for St Mary’s but bishops’ transcripts survive from the beginning of the century. Inevitably there are gaps in the transcripts of both parishes, not all of which occur in the same years; consequently graphs have been constructed of vital events within each parish separately as well as both combined. The most significant gap occurs between 1643 and 1660.

analysis of the 1674L Hearth Tax returns enables a discussion of the relative wealth of the community within its regional and national setting.

iv. Population figures from central records

The first available indicator of early modern population size is the assessment for the Lay Subsidy granted in 1523.²⁹ In 1524 at Whittlesey 298 inhabitants aged sixteen and over were assessed for the first instalment of the subsidy, suggesting a total population of about 1,340 (see Table 3:1 overleaf).³⁰ Within the hundreds of Ely and Wichford, only the city of Ely itself was more populous. Forty years later, in 1563, the vicar of the two Whittlesey parishes reported to the bishop that there were 266 households in St Mary's and eighty-nine in St Andrew's, giving a total of 355.³¹ This equates to a combined population of some 1,775 souls and suggests that from 1524 to 1563 the number of inhabitants had increased by about 435 (32 per cent).³² Again, apart from Ely, Whittlesey had the highest population within the Isle.³³

²⁹ For the background to Tudor Lay Subsidies see R. W. Hoyle, *Tudor Taxation Records: A Guide for Users* (London, 1994). For a detailed discussion of the returns of the subsidy granted in 1523, see J. Sheail, ed. R. W. Hoyle, *The Regional Distribution of Wealth in England as indicated in the 1524/5 Lay Subsidy Returns* (List and Index Society, Special Series, 28 & 29, London, 1998).

³⁰ TNA: PRO: E179/81/136, 'Assessment of first payment of the subsidy, granted 14 Henry VIII, within the Hundreds of Ely and Wichford'. Of the 298 assessments, 254 were on goods and forty-four on wages; no-one was assessed on land. The subsidy was levied on males aged 16 and over; a multiplier of 4.5 allows for women, children under 16 and possible omissions. (I am grateful to Professor Nigel Goose for supplying this multiplier in private correspondence. In print recently, however, he has suggested a multiplier of 3.2 for Lay Subsidy returns. This would suggest a lower total population in 1524 and therefore an even more marked increase between 1543 and 1563. (Nigel Goose and Andrew Hinde, 'Estimating local population sizes at fixed points in time: Part I – General principles', *Local Population Studies*, 77 (2006), pp. 66-74.))

³¹ BL: Harleian MS 594, ff. 198-200, 'The true Certyficate made by the reverend Father in God Richard (Cox) Bushoppe of Elye, of all & singuler the Howsehowldes & the whole numbere thereof conteigned in the same Dyocessee & Jurisdiction. dat. 20 August 1563.' The returns for Whittlesey are on f. 200. All of the returns have been transcribed in Dyer and Palliser (eds), *Diocesan Population Returns*.

³² Dyer and Palliser recommend a range of multipliers between 5.0 and 6.0 for the 1563 returns but Goose considers this somewhat generous and argues for 5.0 at the very most. The former do, however, advise that any calculation based on multipliers 'should be accompanied by a great deal of caution'. (Dyer and Palliser (eds), *Diocesan Population Returns*, p. 1.) Goose's reservations were given in private correspondence.

³³ The combined parishes of Ely had 400 households, those of Whittlesey 355 and those of Wisbech 292.

Compared with its neighbours, this was a populous parish; its population density would also have been high. Indeed, the population density of most fenland communities was high, even in those of low population size. Although the total area of each manor or parish was very large, owing to the presence of extensive fens, the area of the ‘island’ that was able to sustain the weight of buildings was invariably small. Inhabitants inevitably lived close together.

Table 3:1. Population figures for Whittlesey from national sources

Date and source	Number counted	Multiplier	Total
1524, Lay Subsidy	298	4.5	1340
1563, Diocesan Census	355	5	1775
1674, Hearth Tax	660	4.3	2830
1676, Compton Census	2117	1.4 – 1.7	2964 – 3599

Sources: Lay Subsidy (TNA: PRO: E179/81/136); Diocesan Census (BL: Harleian MS 594, f. 200); Hearth Tax (TNA: PRO: E179/224/23); Compton Census (Anne Whiteman (ed.), *The Compton Census of 1676: a critical edition* (London, 1986), p. 163.).

The 1674L Hearth Tax returns record the assessments of 660 dwellings in Whittlesey, probably inhabited by some 2,830 people.³⁴ Since the Diocesan Census of 1563, when the population was about 1,775, it had increased by some 1,050 (60 per cent).³⁵ Once more, this was the highest figure in the Isle other than that for Ely. The returns of the Compton Census, made just two years later, can be used to check population totals derived from the Hearth Tax. Historians have found that

³⁴ TNA: PRO: E179/224/23. The figure includes dwellings in Eastrea and Coates. The totals for the Isle of Ely were first published by C. A. F. Meckings in *VCH Cambs*, 4, and have been reprinted in Nesta Evans and Susan Rose (eds), *Cambridgeshire Hearth Tax Returns Michaelmas 1664* (British Record Society, Hearth Tax Series, 1; Cambridgeshire Records Society, 15, London, 2000), p. lxxxix. When calculating population totals from the Hearth Tax returns, Tom Arkell has suggested a mean household size of 4.3 in both rural and urban areas outside London. (Tom Arkell, ‘A method for estimating population totals from the Compton census returns’, in K. Schurer and T. Arkell (eds), *Surveying the People: The Interpretation and Use of Document Sources for the Study of Population in the Later Seventeenth Century* (Oxford, 1992), pp. 101-02.)

³⁵ This increase of about 60 per cent fits with the national figures calculated by Wrigley and Schofield. Using back projection, they suggest that between 1563 and 1674, the total population grew from 3,048,188 to 5,008,493, an increase of about 65 per cent. (E. A. Wrigley and R. S. Schofield, *The Population History of England 1541-1871: A Reconstruction* (London, 1981), p. 207, figure 7.1; pp. 531-32, Table A3.3.)

incumbents might interpret the instructions for the census differently; consequently Arkell has calculated particular ratios between Hearth Tax returns and those of the Compton Census that indicate the incumbent's method.³⁶ Where the ratio is nearest 3:1, the incumbent had counted the number of adults in the parish; a multiplier of 1.4 to 1.7 will provide the outer limits of the total population. In 1676 the vicar of Whittlesey reported that there were 2,021 conformists and ninety-six non-conformists in the two parishes, a total of 2,117 people, just over three times as many as in the Hearth Tax.³⁷ Arkell's multiplier suggests a population of between 2,964 and 3,599 souls, putting the increase since 1563 at somewhere between 1,189 (70 per cent) and 1,824 (103 per cent), slightly higher than the national trend.³⁸

v. Two local indicators of population size

The significant gap between 1563 and 1674 in national population indicators can be partially filled using sources specific to Whittlesey. In 1603, a rental of both manors was drawn up listing 643 properties comprising land and/or a dwelling, which were held by some 320 tenants.³⁹ At this time 254 tenants held 332 commonable dwellings between them, so there were at least seventy-eight surplus dwellings available for lease to sub-tenants. Conversely, sixty-six tenants held land but no dwelling; some of these may have been absentees and others may have rented a 'surplus' cottage.⁴⁰ Commonable cottages were not, however, the only dwellings within a fenland community. As we will see, tenants of commonable properties

³⁶ Arkell, 'Method for estimating population totals', pp. 110-16.

³⁷ Anne Whiteman (ed.), *The Compton Census of 1676: A Critical Edition* (London. 1986), p. 163. The original census is MS Salt 33 and is held in the William Salt Library, Stafford.

³⁸ Wrigley and Schofield suggest a total population of 5,003,488 in 1676 (a slight drop since 1674). This gives an increase since 1563 of 1,955,300 (64 per cent). (Wrigley and Schofield, *Population History*, p. 207, Figure 7.1; pp. 531-32, Table A3.3.)

³⁹ CUL: Add MS 3826, ff. 8r-35v.

⁴⁰ The majority of tenants with land but no commonable cottage had the same surname as other tenants, suggesting that those particular tenants were not outsiders and so were probably not absentees. As we shall see, there is evidence that cottages were being built in the manors before 1650.

possessed *de jure* common rights in the fen but there were other inhabitants who were permitted *de facto* rights 'for there releife'.⁴¹ The number of these 'poor commoners' varied over time and place and is, therefore, unquantifiable; occasionally, however, the size of this group within a particular community is recorded. At Wichford (Cambridgeshire) in 1621, for instance, sixty-eight householders claimed common in the fens, of whom only thirty-four were 'ancient', that is, legal commoners.⁴² In 1622, at Brandon (Suffolk), meanwhile, there were eighty-four tenants of commonable tenements and fifty-four poor householders who were permitted to common in the fen.⁴³ These examples suggest that the ratio of illegal to legal commoners could be about 2:3 but might reach 1:1.⁴⁴ The ratios at Whittlesey might not have been quite so high, given the small area of the 'islands'. In 1603 at Whittlesey, the minimum number of households was 332 (the actual number of commonable dwellings); a plausible estimate is over 400.⁴⁵

Under the terms of the 1639 enclosure agreement, the tenants of 381 commonable cottages and messuages received allotments.⁴⁶ Since 1603, therefore, the number of commonable dwellings within the manors had increased by forty-nine

⁴¹ BL: Add MS 33466, f. 198, report of jurors of Brandon to the commissioners of sewers, 20 February 1622.

⁴² BL: Add MS 33466, f. 195, report of jurors of Wichford to the commissioners of sewers, October 1621.

⁴³ BL: Add MS 33466, f. 198, report of jurors of Brandon to the commissioners of sewers, 20 February 1622.

⁴⁴ In the early seventeenth century in Brigstock (Northamptonshire) of the 170 households, only sixty-four were legally entitled to common rights in Geddington Chase. These comprised fifty-three 'suit-houses', two half-suit-houses and nine quarter-suit-houses. (Steve Hindle, *On the Parish? The Micro-politics of Poor Relief in Rural England c.1550-1750* (Oxford, 2004), p. 33.)

⁴⁵ It is impossible to know whether those seventy-six tenants who leased their 'surplus' commonable dwelling retained the common rights or leased them as well. The best estimate is that there were between 254 and 332 inhabitants exercising rights derived from 'ancient' cottages in Whittlesey (the number of tenants who held commonable dwellings and the actual number of commonable dwellings); the number of illegal commoners can only be estimated.

⁴⁶ The whole decree is TNA: PRO: E125/24, p. 314, ff. 1r-26r, dated 6 February 1639; the allotments are to be found at ff. 14v-23v. Again some tenants held more than one dwelling and so would have let at least one to a sub-tenant. There were forty tenants who held land but no dwelling: these may have numbered among the sub-tenants.

(14.8 per cent).⁴⁷ As some of the cottages had been divided, there were actually 397 households within commonable dwellings in 1639. The number of non-commonable dwellings in the manors had also increased. In 1650 a jury of St Mary's manor reported that fifty-eight named inhabitants had previously erected illegal cottages within the manor.⁴⁸ Comparison of the names of the offenders with those of tenants in 1639 suggests that they fell into three categories: twenty (34 per cent) were manorial tenants; sixteen (28 per cent) were members of local families; and the remaining twenty-two (38 per cent) were incomers. People in the two latter groups may have been poor and landless; those in the former, such as Robert Beale, were wealthier inhabitants who had been building to lease. In addition to these fifty-eight cottages, which had been built within the town, several farmhouses, mostly inhabited by Walloon settlers, had been built in the enclosures within the drained fens.⁴⁹ The number of commonable dwellings and new cottages and farmhouses therefore suggests that there were over 460 known households in Whittlesey by 1650.

Multipliers calculated to estimate population totals from tax assessments or diocesan returns are not necessarily applicable to individual listings such as rentals or lists of commonable properties. Sometimes, however, contemporary remarks can provide impressionistic population indicators. In October 1621, jurors at a commission of sewers reported that in the town of March 'ther is 192 houseses[sic] inhabited and of the inhabitants ther is 970', that is, on average five people in each

⁴⁷ For a discussion of the increase in commonable cottages, see below. (Chapter 3, section v, 'Two local indicators of population size'.)

⁴⁸ CRO: 126/M2, Court Book of the manor of Whittlesey St Mary, 4 October 1650 and 4 November 1650. The jurors did not give a time-scale for the illegal building so it is impossible to know when it had begun.

⁴⁹ The exact number of new farmhouses built in the Whittlesey fens is unknown but at least three were attacked during the riots: one built by George Glapthorne, one by Francis Underwood and one inhabited by Seigneur Peter Behague. (None of these men were included in the list of people who had recently erected cottages.) The 1674L Hearth Tax returns for Whittlesey include the names of at least eighteen Walloon settlers who were assessed for the tax. (TNA: PRO: E179/224/23.)

household at that time.⁵⁰ If this figure were applied to the number of households in Whittlesey, in 1603 there were some 2,000 inhabitants and prior to 1650 some 2,300 in known households alone. Whilst these figures are somewhat tentative, they are not unreasonable since they fall between the estimates for 1563 and 1674, and they, therefore, confirm that the population of Whittlesey was increasing markedly during that period.

vi. Demographic trends shown by vital events

Records of vital events found in parish registers can be used to calculate natural rates of change within a particular parish. The earliest surviving register from St Andrew's does not commence until 1653 and that from St Mary's until 1683. Much of the missing data, however, is supplied by bishops' transcripts, which commence in 1602 and 1600 respectively, although several transcripts have not survived.⁵¹ Systematic, aggregative analysis of vital events at Whittlesey is not, therefore, possible, although some observations on population trends can be made.⁵² The surviving records confirm that the population was indeed growing during the seventeenth century. The data from years in which figures for each parish are available shows a small but significant surplus of 343 baptisms over burials (8.1 per cent) between 1600 and 1669 (see Table 3:2 overleaf).

⁵⁰ BL: Add MS 33466, f. 172, report of jurors of March to commissioners of sewers, 5 October 1621. It is not possible to compare this figure of 192 households with the 1563 diocesan returns: March was a chapelry of Doddington and the numbers of households in the two settlements were combined in the returns. (Dyer and Palliser (eds), *Diocesan Population Returns*, p. 152.)

⁵¹ Complete data from both parishes survives for only forty-three of the years from 1604 to 1669; in particular, no records from St Andrew's survive at all between 1643 and 1652, and none from St Mary's between 1643 and 1661. For Whittlesey St Andrew, register entries for baptisms begin in 1653, marriages in 1659, burials in 1653; for St Mary, baptisms begin in 1683, marriages in 1654, burials in 1683. The original bishops' transcripts are held in the CUL Manuscripts Department in its capacity as Diocesan Archive Office for the diocese of Ely. (CUL: EDR 3/84, bishops' transcripts from St Andrew's; EDR 3/85, bishops' transcripts from St Mary's.)

⁵² There are too many gaps to make moving averages meaningful.

Table 3:2. Recorded baptisms and burials in Whittlesey, 1600-1669

Parish data	St Andrew	St Mary	Both parishes
baptisms	1935	2638	4573
burials	1750	2480	4230
difference in baptisms : burials	+185	+158	+343
percentage population increase	+10.5%	+6.4%	+8.1%
ratio of baptisms: burials	90.4	94.0	92.5
recorded infant burials	465	844	1309
percentage of infant burials	26.6%	34.0%	30.9%

Notes: The ratio of baptisms to burials is the number of burials per 100 baptisms.
 These figures include all of the extant data; missing years differ in the two parishes.

Sources: CUL: EDR 3/84, 3/85.

In her study of the variations in levels of mortality across geographical contours, Mary Dobson has found not only that low-lying parishes experienced higher rates of mortality but also that rates in parishes on the same contour varied according to the natural drainage pattern, with salt marshes being the unhealthiest areas.⁵³ She expresses mortality as the ratio of burials per 100 baptisms, thus parishes with ratios above 100 were those experiencing excess mortality.⁵⁴ Although Dobson’s study concentrates on Essex, Kent and Sussex, its findings are of considerable relevance to fenland communities. Despite Whittlesey being situated just twenty-six feet above sea-level, its overall ratio of 92.5 indicates that it did not experience excess mortality during the period under consideration.⁵⁵ Nevertheless, out of the forty-three years for which records survive, burials did exceed baptisms in eleven of them, five of which were in the 1660s. It is not surprising, therefore, that

⁵³ Mary Dobson, *Contours of Death and Disease in early modern England* (Cambridge, 1997). For the effect of natural drainage on mortality see pp. 108-23.
⁵⁴ Dobson, *Contours of Death*, p. 102.
⁵⁵ Dobson’s figures show that the average ratio in parishes with saline marshes was 145 and with riverine marshes was 123. (Dobson, *Contours of Death*, Table 3.4, p. 107.)

the natural growth rate of Whittlesey's population between 1600 and 1669 was relatively low: only 8.1 per cent compared with the national rate of 23.9 per cent.⁵⁶

One contributing factor was the high number of infant burials in Whittlesey: 30.9 per cent of all burials during the period.⁵⁷ Another was the higher incidence of illness in fenland parishes compared with upland parishes: the former were notorious among contemporaries for their noxious airs.⁵⁸ One writer advocating drainage argued that the undrained fens damaged fen-dwellers' health since 'The Aer [was] Nebulous, grosse and full of rotten harres; the Water putred and muddy, yea full of loathsome vermine ...'.⁵⁹ Even a poet defending of the traditional fenland way of life admitted that:

The moory soil, the wat'ry atmosphere,
With damp, unhealthy moisture chills the air.
Thick stinking fogs, and noxious vapours fall,
Agues and coughs are epidemical.
Hence ev'ry face presented to our view,
Looks of a pallid or a sallow hue.⁶⁰

The slow rate of population increase and the significance of fenland fevers and agues notwithstanding, figures derived from taxation and diocesan censuses

⁵⁶ The national growth rate is calculated from figures given by Wrigley and Schofield. Using back projection, they suggest that between 1600 and 1669, the total population grew from 4,066,132 to 5,036,598, an increase of 970,466 (23.9 per cent). (Wrigley and Schofield, *Population History*, pp. 531-32, Table A3.3.)

⁵⁷ Whereas the adults who were buried may have contributed to the population increase by having children before they died, the infants (obviously) did not, thus the higher the rate of infant mortality, the lower the natural rate of growth. Whittlesey vicars consistently recorded '*infans*' against the names of *some* of the children buried, suggesting that they were differentiating between babies and children under sixteen. Professor Richard Smith has suggested that '*infans*' referred to children under two, or, more specifically, children who were being breast-fed into their second year of life. (*Ex info.* Professor Smith.)

⁵⁸ See Dobson, *Contours of Death*, Chapter 6, 'Marshlands, mosquitoes and malaria' for a detailed discussion of the illnesses in such regions.

⁵⁹ H. C., *A Discourse Concerning the Drayning of Fennes and Surrounded Grounds in the sixe Counteys of Norfolke, Suffolke, Cambridge with the Isle of Ely, Huntington, Northampton and Lincolne* (London, 1629), sig. A3.

⁶⁰ 'The Inundation, or The Life of a Fen-Man, A Poem', by 'A Fen Parson' (undated, but eighteenth-century), lines 132-37. The whole poem has been published in *Fenland Notes and Queries*, 4 (January 1898 – October 1900), no. 827, pp. 274-82.

demonstrate that the population of Whittlesey increased dramatically between 1563 and 1674: from approximately 1,775 to about 2,830, an increase of some 60 per cent. Since the natural rate of increase between 1600 and 1669 was only 8.1 per cent, the overall increase must have been caused by an influx of migrants. It is likely that most of this in-migration occurred from the late 1630s onwards, following drainage and enclosure, although the original Walloon settlement at Whittlesey may have been established as early as the 1610s.⁶¹ We have, indeed, already noted that the number of commonable cottages increased between 1603 and 1638; that additional non-commonable cottages were erected before 1650; and that new farms were created in the drained fens. The ready availability of land drew people to Whittlesey.⁶² Although the unhealthiness of the area affected the natural rate of increase in population, it failed to affect the actual rate. The prospect of wealth, or at least a living, outweighed that of ill-health, if the latter was even considered at all.

vii. The wealth of the community at Whittlesey: indicators in the Hearth Tax

As we have already seen regarding Duffield, Hearth Tax assessments may be used, with caution, to produce a reasonably accurate overall profile of the distribution of

⁶¹ It has not been possible to trace the precise origins of the settlement but it is clear that the Whittlesey colony predates that at nearby Thorney, which was established by the earl of Bedford. A correspondent in *Fenland Notes and Queries* states that 'Sir Theodore Turquet de Mayerne, a French Protestant, physician to King James I in 1611, obtained a grant of several thousand acres of fen ground in Whittlesey, and many of the Huguenot [*recte* Walloon] families in that district owe their change of domicile to the drainage scheme of Sir Theodore'. ('Drainage of Thorney Fen', *Fenland Notes and Queries*, 4, no. 809, p. 241.) Although there are several records of monetary grants to Mayerne in *CSPD, James I*, no grant land in Whittlesey is recorded in those papers. Other records confirm the existence of a Walloon church there: in 1646 the *Colloque*, the governing body of the French-speaking Protestant church in England, refused to grant official recognition to the church that comprised Pastor Du Perrier and his Whittlesey flock. The congregation, but not all of the people, moved to Thorney shortly after. (Le Baron F. de Schickler, *Les Eglises du Refuge en Angleterre* (3 volumes, Paris, 1892) 2, p. 107.) For an brief account of work in progress on fenland Walloon communities, see Jean Tsushima, 'Melting into the landscape; the story of the 17th-century Walloons in the Fens', in Randolph Vigne and Charles Littleton (eds), *From Strangers to Citizens: The Integration of Immigrant Communities in Britain, Ireland and Colonial America, 1550-1750* (Brighton, 2001), pp. 106-13.

⁶² Since drainage and enclosure occurred in other fenland parishes at the same time, the immigrants probably came from upland parishes, that is parishes to the west, rather than from neighbouring fenland parishes to the north, south and east.

wealth within a given community since there was clearly some correlation between hearths, house size, wealth and social standing.⁶³ The Duffield evidence, however, also confirmed that historians should not assume that the number of hearths in an individual house necessarily indicated the level of the occupier's wealth. For various reasons, the surviving Hearth Tax assessments appear in different formats, some containing more details than others.⁶⁴ For Cambridgeshire, the returns of Michaelmas 1664 are particularly full. These returns comprise a copy of the 1662M assessments that the 1664M assessors checked and annotated with any alterations, which might include changes in owner or tenant, or discrepancies, which might include differences in the number of hearths assessed or failure to pay previous assessments.⁶⁵ Nesta Evans has briefly discussed these differences in the 1664M returns for Cambridgeshire as a whole and has noted that the proportion of alterations and discrepancies was apparently greater at Whittlesey than anywhere else in the county.⁶⁶

In 1662, in Whittlesey 512 people were assessed for the tax. In 1664, of these only fifty-five (11 per cent) had stayed in the same dwelling, had declared the correct number of hearths *and* had paid the relevant tax; there were alterations or

⁶³ Chris Husbands, 'Hearths, wealth and occupations: an exploration of the Hearth tax in the later seventeenth century', in Schurer and Arkell (eds), *Surveying the People*, pp. 65-77. For a discussion of various models constructed for the analysis of Hearth Tax assessments, see Appendix 3, 'Using the Hearth Tax as an indicator of wealth'.

⁶⁴ For cautionary advice on using Hearth Tax assessments, see, in particular, the work of Tom Arkell. For example, Tom Arkell, 'A student's guide to the hearth tax: some truths, half-truths and untruths', in N. Alldridge (ed.), *The hearth tax: problems and possibilities* (Hull, 1984); Tom Arkell, 'Identifying regional variations from the hearth tax', *The Local Historian*, 33 (2003), pp. 148-74; *idem*, 'Printed instructions for administering the Hearth tax', in Schurer and Arkell (eds), *Surveying the People*, pp. 38-64.

⁶⁵ TNA: PRO: E179/84/437, mm. 40r-45v. These have been transcribed in Evans and Rose (eds), *Cambridgeshire Hearth Tax Returns*, pp. 129-46. The figures in the following analysis are taken from a database that I have constructed from the information contained in the returns; they do not tally exactly with those given by Evans in the introduction to the volume.

⁶⁶ Nesta Evans, 'How comprehensive is the hearth tax return?', in Evans and Rose (eds), *Cambridgeshire Hearth Tax Returns*, pp. xxiii-xxvi.

discrepancies in the remaining 457 assessments.⁶⁷ Analysis shows that although some of these differences were due to changes in ownership, many were due to evasion of the earlier tax.⁶⁸ In 1662 some 148 householders (29 per cent) had disclosed fewer hearths than they possessed; 169 (33 per cent) had never paid their assessment before 1664M.⁶⁹ Evasion spanned the whole social spectrum: from thirty-four widows to Francis Underwood, esquire, and George Glapthorne, esquire, both of whom were magistrates.⁷⁰ Further evidence of evasion can be discerned in some of the 187 'new entries' in 1664M.⁷¹ Of these, 104 were exempted houses that now had to be listed, a handful of the remaining eighty-three may have been built since 1662, but most had simply been omitted previously.⁷² Given these problems with the 1662 and 1664M assessments for Whittlesey, the following brief analysis uses the 1674L assessments to examine the distribution of wealth within Whittlesey. Firstly, it applies to these returns a model that categorises the wealth of communities according to the number of hearths assessed; secondly, it considers the correlation of hearths, house size, wealth and social standing in Whittlesey using the probate inventories of known taxpayers.

⁶⁷ For a detailed analysis of the discrepancies at Whittlesey, see Evans, 'How comprehensive is the hearth tax return?', pp. xxiv-xxv.

⁶⁸ My analysis of the discrepancies differs in some respects from that of Evans. In 1662M, 512 assessments were made; in 1664M the number of assessments increased to 697. Two houses had been demolished in the interim. Of the 187 'new entries', 104 were exempted householders who now had to be listed.

⁶⁹ Forty-eight of those Whittlesey householders who had not paid any assessment before 1664M had also declared fewer hearths than there actually were in their house. The calculations by Evans regarding the number of householders elsewhere who declared fewer hearths than there actually were in their house are as follows: Great St Mary's (Cambridge), 8 per cent of 161 householders; St Peter's (Cambridge) 10.5 per cent of 76 householders; Linton, 29.5 per cent of 162 householders; Over, 13 per cent of 139 householders.

⁷⁰ Although eight of these widows were deemed not liable in 1664M, only three were specifically noted as 'poore' in 1662M; the remaining twenty-six had evaded the tax. For brief biographies of Glapthorne and Underwood, who were leading supporters of the enclosure at Whittlesey, see Chapter 5, part 4, section v, 'Enclosers and engrossers at Whittlesey'.

⁷¹ In 1662M, 512 householders had been assessed; in 1664M the number increased to 697.

⁷² The political implications of this tax evasion are discussed in Chapter 6, section v, 'Politics of participation: the politics of the realm'.

Arkell has recently suggested that in any community the number of houses with three or more hearths provides a more accurate guide than previous categorisations to the relative wealth of that particular place.⁷³ He has further suggested that such a comparator can therefore identify regional variations in wealth.⁷⁴ To facilitate comparison between various areas he divided England and Wales into a series of sub-regions; Whittlesey was included in the Isle of Ely (centre). With only 12.2 per cent of its houses having three or more hearths, this region was one of only two southern areas that Arkell specifically identified as being ‘relatively under-developed’ in terms of housing stock and therefore of wealth.⁷⁵ In Whittlesey itself just 13.5 per cent of the houses had three or more hearths (see Table 3:3 below and 3:4 overleaf).

Table 3:3. Hearths in Whittlesey houses in 1674L assessments

	1	2	3	4	5	6	7	8	9	10+	Total entries	Total hearths
charged	226	209	55	14	7	2	1	-	3	5	522	1009
empty etc	11	6	2	-	-	-	-	-	-	-	19	29
exempt	119	-	-	-	-	-	-	-	-	-	119	119
total houses	356	215	57	14	7	2	1	-	3	5	660	1156

Source: TNA: PRO: E179/224/23.

⁷³ Arkell, ‘Identifying regional variations’, pp. 148-74.
⁷⁴ This second suggestion is somewhat contentious since it fails to take into account regional building styles.
⁷⁵ Arkell, ‘Identifying regional variations’, Table 4, pp. 166-67; quotation from p. 161. The other under-developed southern area was Cornwall (far west), with just 8.9 per cent. Although there are thirty inventories dating from 1674 to 1680 for Whittlesey inhabitants assessed in the 1674 Hearth Tax, only nine mention fire-irons or ‘fire-rooms’ and only two indicate in which room the hearth was situated. (See Appendix 6, ‘Whittlesey Hearth Tax inventories’.)

Table 3:4. Percentages of Whittlesey houses in 1674L assessments

	Exempt	1h	2h	3-4h	5-9h	10+h	Total entries	3+h	n/c + 1h
total houses	119	237	215	71	13	5	660	89	356
percentage	18.0	35.9	32.6	10.8	2.0	0.7	100	13.5	53.9

Source: TNA: PRO: E179/224/23.

Although it is arguable that the number of non-chargeable dwellings within a community is an indicator of the level of poverty there, Arkell’s analysis of sub-regions demonstrates that the percentage of non-liaible dwellings was not necessarily inversely proportionate to that of houses with three or more hearths.⁷⁶ Indeed, with its non-chargeable properties standing at only 20 per cent, the Isle of Ely (centre) ranks third lowest in his table. Whittlesey itself had just 18 per cent, the same as the second lowest: not exactly the situation that might be expected in a fenland area which, as we have already seen, was attracting large numbers of incomers.⁷⁷

This low proportion of non-chargeable properties creates something of a conundrum within the terms of Arkell’s analysis. Here was a community that had almost the lowest proportion of non-chargeable hearths, and, therefore, a low incidence of individual poverty. And yet, that same community was situated within one of poorest southern regions and itself conformed to the relevant criterion, namely that it had a very low percentage of houses with three or more hearths. Perhaps the best interpretation of these findings is that Whittlesey was situated in a generally poor area, where wealth was relatively evenly spread. Such an interpretation seems to be confirmed by the high percentage of two-hearth houses, which also indicates a

⁷⁶ Areas with the highest number of large houses did not have the least number of non-chargeable properties. For example, Middlesex (south) had the highest percentage of houses with three or more hearths (52.6 per cent) but its percentage of non-chargeable properties was 37 per cent.
⁷⁷ In 1674, 119 Whittlesey inhabitants had been ‘Discharged by legall certificate’. Only the East Riding (south) had a smaller percentage of non-chargeable hearths (17 per cent); the Isle of Wight (all) also had 18 per cent.

relatively unpolarised share of wealth. At Whittlesey, 32.6 per cent of the housing stock had two hearths, compared with, for example, 17.2 per cent at Terling (Essex).⁷⁸

Following the method used by Wrightson and Levine in their work on Whickham (County Durham), probate inventories can be used to test the socio-economic profile of Whittlesey suggested by the 1674L Hearth Tax assessments.⁷⁹ Some of the twenty-four surviving Whittlesey taxpayers' inventories drawn up between 1674 and 1680 will be analysed briefly here, with particular attention being paid to the twelve relating to people assessed on one chargeable hearth (see Appendix 6, 'Whittlesey Hearth Tax inventories').⁸⁰ As with Duffield, the purpose is to ascertain the range of wealth enjoyed by the one-hearth-householders and whether there were any discernible variations in the nature of their actual houses.

The total wealth of the twelve one-hearth-chargeable taxpayers ranged from £2 6s 8d (William Fawne) to £192 8s 4d (Isaac Gardner). Whilst Fawne, who was a labourer, fits neatly into the one-hearth categories suggested by Skipp and by Wrightson and Levine, Gardner does not.⁸¹ Although Gardner was indeed described as a husbandman, his inventory shows that he had nearly £80-worth of livestock, including seventeen cattle and fourteen horses, and £82-worth of crops.⁸² Unlike those of the Duffield taxpayers, the stated occupations of the one-hearth-chargeable

⁷⁸ See Appendix 3, 'Using the Hearth Tax as an indicator of wealth'. We have already noted that at Duffield, where 6.9 per cent of the houses had two-hearths, lower numbers of hearths might be attributed as much to the use of coal as to the relative wealth of the householder. Further significance of the two-hearth houses at Whittlesey is discussed below.

⁷⁹ D. Levine and K. Wrightson, *The Making of an Industrial Society: Whickham 1560-1765* (Oxford, 1991), pp. 155-72.

⁸⁰ As in the Duffield analysis, a period of six years and under was considered an acceptable time gap between the Hearth Tax assessments and the valuations of a taxpayer's wealth. However, in the absence of Whittlesey inventories dating from before 1673, it has not been possible to estimate the average levels of wealth of husbandmen and yeomen there. Only absolute comparisons can be made on this occasion. One of the inventories relates to Ralph Asling, a labourer, who was assessed as non-chargeable.

⁸¹ See Appendix 3.

⁸² CRO: inventory of Isaac Gardner of Whittlesey (appraised 18 May 1676; probate granted 26 May 1676).

householders at Whittlesey did not vary greatly. They comprised one baker, five husbandman, three labourers and one widow, the other two not being given; none were yeomen. Perhaps not surprisingly, the four men with the lowest inventory values were not husbandmen but the baker and the three labourers.⁸³ With one exception to which we will return, amongst the twenty-four Whittlesey taxpayers there was a tangible difference between the homes of husbandmen and yeomen: those designated 'husbandman' had only one hearth, regardless of their wealth, whereas those designated 'yeoman' had two or more. There was, however, no such distinction between the number of (listed) rooms within those houses: four of the one-hearth houses apparently had as many rooms as some of the two-hearth houses.

It is dangerous to draw conclusions from such a small sample, but perhaps it can be suggested that at Whittlesey the possession of an extra hearth actually *was* a plausible indicator of status and/or wealth. Fenland cottages were compact and were heated by peat, which required a clear outlet for its stinging smoke.⁸⁴ The pressure on building space within the town itself might have limited the floor plan, and therefore the number of downstairs rooms, in these dwellings but it did not necessarily limit the number of rooms with hearths or preclude the addition of an extra one. Indeed, we have already noted that there was a high proportion of dwellings with two hearths. Lack of building space may also help to explain the low proportion of dwellings with three or more hearths, which Arkell has assumed denotes a lack of wealth.⁸⁵ Moreover, the four-hearth house of David Decount, a

⁸³ William Fawne, the baker John Wilkes (£8 15s 0d) and the labourers Thomas Metcalfe (£12 1s 8d) and William Jarman (£15 14s 6d).

⁸⁴ Peat was burnt in blocks on open fires. 'The squat rooms of ancient fen cottages had been built to economise on heat and turf was ideal for them, smouldering cosily and aromatically into a creamy ash, seldom being allowed to go out all the year through, although they needed a clear outlet for the smoke which could sting the eyes when trapped.' (Anthony Day, *Turf Village: Peat Diggers of Wicken* (Cambridge, 1985), p. 3.)

⁸⁵ I have not been able to find any detailed studies of early modern fenland housing. Nesta Evans has related Hearth Tax assessments for Willingham to properties on a map of the village and has noted

Walloon living at Nordy Gravel, is not quite the anomaly that it appears to be. This was a house built on a farm within the drained fen, an area where there was no pressure on building space.⁸⁶ The ascription ‘husbandman’ probably refers to the fact that Decount’s property was leasehold rather than an ‘ancient’ manorial holding and thus his status is not necessarily anomalous either.⁸⁷

This discussion of an incomer inhabiting a new house leads us back to our original exploration of the demography of Whittlesey. To summarise, the population of Whittlesey had more than doubled between 1523 and 1676, the increase being due principally to in-migration rather than natural growth. When used as an indicator of status, hearth numbers suggests that at the end of the period wealth within the community was relatively evenly spread: only 13.5 per cent of the housing stock had three or more hearths but only 18 per cent were exempted from the Hearth Tax. The latter figure suggests that the enclosure of the vast common fens, and the creation of allotments and new farms within the enclosures, did not lead to the emiseration of the Whittlesey population. Now that we have established that this population was increasing, we need to consider the local economy which sustained it; not only the nature of landholding and entitlements to common rights but also the means by which inhabitants made their living from the surrounding fields and fens.

that ‘a few houses standing in Willingham in the seventeenth century survive, and there are nineteenth-century photographs of many more’. She does not, however, describe or show pictures of any of them. (Evans and Rose (eds), *Cambridgeshire Hearth Tax Returns*, p. lv.) From the few standing early modern cottages in Whittlesey and from pictures of others now demolished, it is clear that these were small buildings and that neighbouring cottages were very close, or even adjoined. See, for example, (Anon.), *Millennium Memories of Whittlesey*, 1 (compiled for the Whittlesea [sic] Society, Whittlesey, undated, but c.2000), *passim*.

⁸⁶ Sarah Pearson has commented that new houses were more likely to have more hearths than old ones. She found that ‘in all parts of [Kent] the occupiers of older buildings were slow to upgrade them, while new ideas about what constituted an acceptable level of heating meant that newly erected buildings were far better equipped’. (Sarah Pearson, ‘The Kent Hearth Tax records: context and analysis’, in Duncan Harrington (ed.), *Kent Hearth Tax Assessments Lady Day 1664* (British Record Society, Hearth Tax series, 2; Kent Archaeological Society, 29, Rochampton, 2000), p. ci.)

⁸⁷ Decount was clearly a successful farmer. Indeed, the total value of his inventory (£813 16s 2d) was by far the highest of all seventy Whittlesey inventories analysed; the next highest was valued at £446 4s 6d.

viii. Forms of tenure in Whittlesey

In 1603, the same year in which the Whittlesey manors were formally entrusted to the earl of Exeter, a very detailed record of the two manors, containing a survey, rental and field book, was produced.⁸⁸ The rental lists 643 holdings within the manors: five were leasehold, no more than sixteen were freehold, four were 'harriott hold' and the remaining 622 were copyhold.⁸⁹ Thus, even in the early seventeenth century, copyholding was by far the most dominant form of tenure (97 per cent). Articles drawn up in 1626 indicate that some customary tenants were copyholders for lives and the remainder copyholders by inheritance, but as neither these articles nor the 1603 rental distinguish between the two it is impossible to know which form of copyhold predominated.⁹⁰ Certainly copyhold by inheritance was far more favourable to tenants and their heirs than copyhold for lives, a fact that, as we shall see, the Whittlesey tenants appreciated and exploited.⁹¹

The majority of manorial holdings at Whittlesey comprised either a dwelling, whether a cottage or messuage, or a piece of land, usually a fulland or fraction of a

⁸⁸ CUL: Add MS 3826. Within the text, no explanation is given for the document's production but since it was drawn up in the same year as the manors formally changed hands, it was probably made as a result of the change in ownership. On f. 5r it is noted that the survey had been carried out by 'Richard Treswell sen[ior] 1603'. It is likely, however, that this is an error for 'Ralph Treswell sen[ior]' as a surveyor named Ralph Treswell (c.1540-1617) was employed in various counties during the late sixteenth and early seventeenth centuries. (Sarah Bendall (ed.), *Dictionary of Land Surveyors and Local Mapmakers in Great Britain and Ireland, 1530-1850* (2nd edition, Boston Spa, 1997), 2, pp. 517-18.) Treswell's two sons, Ralph junior (practising 1601-21) and Robert (practising 1591-1633), were also surveyors. The latter was involved in a lawsuit with the earl of Newcastle over the sale of woods in Duffield Frith in 1630. (TNA: PRO: DL4/79/14 & 79/55.)

⁸⁹ There were eleven freehold properties in St Mary's and five in St Andrew's. (CUL: Add MS 3826, ff. 8r, 27r.) Of the five leaseholders, three held relatively small parcels of meadow, Michael Beale leased the demesne of St Mary's and Thomas Glapthorne that of St Andrew's. (ff. 19r-22r, 35v.) The four 'hariott hold' properties were all messuages that were situated in Eastrea and belonged to St Mary's manor. (f. 18r.)

⁹⁰ TNA: PRO: C78/294/3, decree confirming the agreement between Robert Coveney *et al.* and Lady Elizabeth Hatton *et al.*, 12 May 1626.

⁹¹ For a detailed, if at times tortuous, discussion of the various forms of land tenure in early modern England, see Eric Kerridge, *Agrarian Problems in the Sixteenth Century and After* (London, 1969), pp. 32-64.

fulland (see Table 3:5).⁹² Neither the 1603 rental nor the 1639 Exchequer decree, which allocated to allotments in the drained fen to all manorial tenants, however, defined the various types of holding. In general, a messuage was ‘a house comprising outbuildings, the orchard and cartilage or courtyard and ... the garden’.⁹³ In many English manors the original basis of a manorial holding was a ‘yardland’ or ‘virgate’, which, depending on local custom, generally ranged in area from twenty to thirty acres.⁹⁴ At Whittlesey a yardland was known as a ‘fulland’, an exclusively local term, and probably contained twenty acres.⁹⁵

Table 3:5. Manorial holdings in Whittlesey in 1603 and 1639

Property	1603	1639 [stated]	1639 [calculated]
commonable copyhold cottage or dwelling	325	378	366
commonable freehold cottage or messuage	7	not given	15
fullands	38	29	31
fractions of fullands	88	130	132
other lands (holts, odd acres, etc)	185	80	80
total	643	617	624

Sources:
1603: Database constructed from details in CUL: Add MS 3826.
1639 [stated]: Exchequer commissioners’ summary of their report. (TNA: PRO: E125/24, p. 314, f. 23v.)
1639 [calculated]: Database constructed from the details in the Exchequer Commissioners’ report. (TNA: PRO: E125/24, p. 314, ff. 14v-23v.)

⁹² A particular tenant might have had more than one holding but these holdings were rented separately.
⁹³ J. B. Saunders (ed.), *Mozley & Whiteley’s Law Dictionary* (9th edition, London, 1977), p. 208.
⁹⁴ Saunders (ed.), *Mozley & Whiteley’s Law Dictionary*, p. 360; S. Coleman and J. Wood, *Historic Landscape and Archaeology Glossary of Terms* (2nd edition, Bedford, 1988), p. 59.
⁹⁵ The word ‘fulland’ does not appear in the *OED* or in any glossaries of landscape terms. The only ‘definition’ is to be found in the 1603 field book itself. Treswell noted that one acre held by John Hemmond in Church Field belonged ‘to his halfe yardland’; the rental records that Hemmond held ‘halfe a full Land’. (CUL: Add MS 3826, ff. 33v, 102r.) Both William Plomer and William Oughty each held one fulland: the total acreage of the various strips that they held in the common fields was 17.5 and 17.0 acres respectively, suggesting that a fulland had originally contained about 20 acres. (CUL: Add MS 3826, various ff.)

Commonable cottages were usually ‘ancient cottages’, that is, not newly erected properties, which had a small area of land and common rights attached.⁹⁶ It must be emphasised, however, that whilst some commonable cottages may have been humble dwellings, others may have been more substantial buildings: ‘cottage’ was a legal rather than an architectural term. Cottages generally had a croft of at least four acres next to them; some may also have had land in the common fields. By 1603 only a small proportion of the commonable cottages in Whittlesey possessed such land: of the 123 tenants who held only a commonable cottage, just nineteen (15.4 per cent) possessed strips in the common fields.⁹⁷ Unless they had non-farming occupations, the tenants of those 104 commonable cottages that did not have any strips must have been engaged solely in animal husbandry and the exploitation of their common rights in the fens.

Leigh Shaw-Taylor has suggested that, at a particular point in time, a community might have decreed that all buildings then standing, or standing by some previous date, were commonable, and that no building erected later would qualify.⁹⁸ Such ruling would therefore fix the number of ‘ancient’ commonable properties and so regulate the number of tenants with legal access to the manorial commons. In some fenland manors, however, commonable properties were not necessarily

⁹⁶ Neeson discusses ‘common-right cottages’ but does not actually define them. (Neeson, *Commoners*, pp. 61-64.) Curiously she refers to a cottage with ‘the proverbial three acres’: by an Act of 1589, new cottages had to have at least four acres of land attached.

⁹⁷ The number of strips belonging to the nineteen cottages ranged from one to twenty. Since the rents for these nineteen properties ranged from 1d to 7s *per annum* and the annual rent for all of the commonable cottages ranged from 1d to 19s 4d, tenants did not necessarily have to pay a higher rent for a cottage with lands in the common fields. It is possible that all of the cottages had originally had lands in the common fields attached to them and that over the years the strips and cottages had been separated by their tenants with the consent of the lord of the manor. This might also account for some of the ‘odd acres’ listed in the Exchequer decree.

⁹⁸ Leigh Shaw-Taylor, ‘The management of common land in the lowlands of southern England’, in Martina de Moor, Leigh Shaw-Taylor and Paul Warde (eds), *The Management of Common Land in North West Europe, c. 1500-1850* (Turnhout, Belgium, 2002), p. 71. Shaw-Taylor has found one definite example of this occurring. In Hitchin (Hertfordshire) an early eighteenth century by-law declared that no cottage or house built since 1589 had any right of common in the manor. (HALS: 87805.) He notes that it is probably not coincidental that 1589 was the year in which the statute against erecting cottages with less than four acres of land was enacted.

‘ancient’. We have already noted that in 1621 jurors from Wichford reported that ‘the number of our housholderes, which have right, and doe claime right of common [in the fen], are 68, whereof 34 are auntient’.⁹⁹ At Whittlesey the number of commonable properties was not fixed either: between 1603 and 1639 the number of commonable dwellings increased by forty-nine, from 332 to 381, an increase of 14.8 percent (see Table 3:5). Due to the lack of court records, it is not possible to trace the mechanics behind the establishment of these new commonable cottages and messuages: they may have been deemed commonable because they had been built on land that was already commonable. Although Shaw-Taylor suggests that in theory practices of this kind should not occur, there is clear evidence in the 1603 rental that some inhabitants were building on commonable property.¹⁰⁰

Manorial tenants did not necessarily inhabit their properties but the majority of those who only held a cottage or a messuage probably did.¹⁰¹ In 1639 both the earls of Portland and Bedford and sixty-seven tenants, however, held more than one cottage or messuage. Of these, forty-six held two dwellings each, fourteen had three and the remainder held between four and fourteen.¹⁰² Assuming that the earls and each of the tenants who held more than one dwelling retained one for their own use,

⁹⁹ BL: Add MS 33466, f. 195, report of jurors of Wichford to the commissioners of sewers, October 1621.

¹⁰⁰ Sir William Fitzwilliam paid an annual rent of 4½d for ‘a Croft now a Cottage’. (CUL: Add MS 3826, f. 12r.)

¹⁰¹ For example, William Harwood, whose only holding in 1639 was a cottage in Churchgate and Thomas Jerman who only held a cottage in Crossgate.

¹⁰² For example, George Glapthorne rented fourteen separate holdings that comprised one manor house, two messuages, eleven cottages, one ‘void’ (presumably empty or derelict) messuage and twenty-five acres of land. On a smaller scale, Robert Beale, gentleman, held five cottages, one free messuage and one acre of land. Pinckbeck Pearson held two cottages, both near Perkinsons Lane, and one acre of land in St Andrew’s in his own right and a fulland in St Mary’s in right of his wife. In the database search that determined the number of tenants holding more than one dwelling, the problem of isonomy was necessarily ignored; therefore, sixty-seven is the minimum number of tenants holding more than one dwelling. (See Appendix 5, ‘The problem of isonomy: the Whittlesey allotments’.)

between them could have they leased 124 'surplus' cottages to sub-tenants.¹⁰³ In 1639 these surplus cottages comprised almost one-third (32.5 per cent) of the commonable dwellings within the manors. There were at least three courses of action open to tenants who wished to lease a commonable dwelling to a sub-tenant. Firstly, they could lease the cottage and its attached land to the same person; secondly, they could lease the dwelling and retain the land for their own use; and thirdly, they could lease the two separately to different people.¹⁰⁴ They might also lease the common rights attached to those properties, not necessarily to the same sub-tenants.

The presence in Whittlesey of so many 'surplus' cottages that were let to sub-tenants was not uncommon in fenland communities. In 1604, opponents of a drainage bill then before parliament claimed that the inhabitants of fenland towns could be divided into three sorts. Firstly, commoners holding a house or land by copy or lease who owned twenty or more cattle, draught and breeding mares, and many sheep, as well as land in the common fields; secondly, commoners holding a house by copy, who invested all their wealth in cattle; thirdly, sub-tenants of the others, many of whom gained their living through keeping cattle, although some had

¹⁰³ That the Whittlesey evidence allows the calculation of the number of sub-tenants is unusual. For example, in her study of landholding in Norfolk, Jane Whittle was unable to calculate the number of sub-tenants within the various manors. (Jane Whittle, *The development of agrarian capitalism: land and labour in Norfolk, 1440-1580* (Oxford, 2000), *passim*.) For the rare occurrence of a rental that recorded sub-tenants, see David R. Clarke, 'The 'land-family bond' in East Sussex, c.1580-1770', *Continuity and Change*, 21 (2006), pp. 341-69, especially pp. 356-60.

¹⁰⁴ The Michaelmas 1664 Hearth Tax returns confirm that some Whittlesey inhabitants rented a dwelling while the land attached to it was either leased to another or used by the owner. For example, in the 1662 Lady Day returns, Robert Digell, a victualler, was assessed on two properties, one with three hearths and the other with one. In the Michaelmas 1664 returns, the assessors noted that while he leased the latter property from William Maxey of March, Digell actually occupied the land but 'letts the house to a poore man that takes collection'. The 'poor man' was exempted from the tax and neither Digell, who literally reaped the benefit of the land attached to the house, nor Maxey, the owner, paid any tax for it. (TNA: PRO: E179/84/437, f. 41r.) In 1639, three commonable cottages belonging to 'William Maxey' had been allocated ten acres each.

none.¹⁰⁵ As we shall see, apart from the comment about owning sheep, this could plausibly serve as a description of the economy of Whittlesey prior to drainage.

Commonable cottages might be held jointly by two named tenants, as were seventeen cottages at the time of the Whittlesey enclosure; in such cases, the building, land and rights would be divided.¹⁰⁶ In upland manors, where there were relatively small areas of common and/or stinted common rights, tenants of divided cottages had divided rights and, therefore, very limited access to commons.¹⁰⁷ As there were over 18,500 acres of common fen in Whittlesey, the division of a cottage, although legally halving the amount of common available to each tenant, in practice had no effect on their access to the fen. After enclosure, however, the ten-acre plot allotted in lieu of common rights would be divided between them; enclosure would, therefore, hit the tenants of divided cottages particularly hard.¹⁰⁸

ix. Entitlement to common rights at Whittlesey

Although Whittlesey tenants were members of a community grounded in and reliant upon custom and customary rights, their specific rights were rarely articulated because, in general, customs were only described explicitly when they were being

¹⁰⁵ CUL: EDR A8/1, manuscript volume on the fens, pp. 63-64.

¹⁰⁶ Of the thirty-four tenants, four were sisters (Annis and Sarah Butler, Margaret and Alice Esam), four were brothers (Robert and Francis Bevill; George and Robert Clipson), two were mother and son (Widow Whitmore and Thomas Whitmore). The relationships, if any, between the other pairs are unknown. These people were not sub-tenants but legal manorial tenants.

¹⁰⁷ Neeson, *Commoners*, p. 64.

¹⁰⁸ The process of dividing a commonable cottage is clearly demonstrated by an entry in the court book of St Mary's manor. At enclosure, sisters Margaret and Alice Esam (or Easham) jointly held a commonable cottage in Horsegate and were allotted ten acres between them. (TNA: PRO: E125/24, p. 314, f. 19r.) It is possible that they had inherited the cottage from Robert Esham, who held a commonable cottage in the manor of St Mary's in 1603. (CUL: Add MS 3826, f. 12v.) In April 1644, their cottage, with its appurtenances and ten acres in the drained fens, was divided by licence of the lord of the manor between the sisters and their husbands. Presumably, now that the sisters were married, it was necessary to formalise the division of their inheritance. Margaret and Henry Smith would hold 'the east part of the said Cottage next the street with 140 foot of the Croft & all the Running Common & the moyety of the Ten acres allotted to the said Cottage by the Decree in the Exchequer'; Alice and Henry Inman would hold the residue of cottage and croft, being '266 foot abutting west upon the Feild & the other moyety of the Ten acres'. (CRO: 126/M2, 25 April 1644, emphasis added.)

redefined or challenged.¹⁰⁹ Thus we are fortunate that in 1600, during over a dispute over rights to mow the common meadows, deponents described tenants' common rights within the manors.¹¹⁰ They comprised:

commons for all manner of cattle sance number and commons of fisshing & fowling with all maner of lawfull engins and common of Estever fodder turbery & wood to be by them mowed cut or digged as belonging & appertayning to their howses & tenements.¹¹¹

Tenants of commonable properties, therefore, had access to extensive and extremely beneficial rights.

There was, however, some confusion amongst deponents concerning the definition of these properties. Robert Kelfull suggested that 'such commonage' should only be taken by tenants 'levant and cowchant upon ancient commonable tenementes'; whereas Robert Searle deposed that it was taken by 'such tenantes as have bene levant and cowchant their either upon ancient or new built howses'.¹¹²

John Boyce, however, stated that:

no such commonage hath bene taken to his knowledge by any persons who have not bene inhabitantes ther levant & couchant upon ancient comonoble

¹⁰⁹ The 1603 survey, therefore, did not define common rights at Whittlesey, although it did describe in detail the properties to which they were attached, nor were they ever outlined by tenants in any documents relating to the enclosure. In 1626, the articles agreed between Lady Hatton and leading tenants did (re)define some rights: certain areas of common pasture were surrendered to the lords and depasturing in the common fields after harvest would thenceforward be stinted. (TNA: PRO: C78/294/3, 12 May 1626.)

¹¹⁰ TNA: PRO: E134/42Eliz/Hil2, Michael Beale and Thomas Glapthorne 'fermors' and Godfrey and Robert Beale, bailiffs, *versus* Ambrose Smith, Ralph Boyce and William Quicklove, January 1600

¹¹¹ TNA: PRO: E134/42Eliz/Hil2, deposition of Robert Searle of Whittlesey, aged 60, in answer to interrogatory number 13 for the plaintiffs, 17 January 1600. The various rights will be defined below and their contribution to the economy of Whittlesey households will be considered. (Chapter 3, section ix, 'Entitlement to common rights at Whittlesey' and section x, 'Definitions of common rights at Whittlesey'.

¹¹² TNA: PRO: E134/42Eliz/Hil2, depositions of Robert Searle and Robert Kelfull in answer to interrogatory number 15 for the plaintiffs, 17 January 1600. 'Levant and couchant' refers to the capacity of a commonable property. 'When land to which a right of common pasture is annexed can maintain a certain number of cattle during the winter by its produce, or requires a certain number of cattle to plough and manure it, those cattle are said to be levant and couchant on the land.' (Saunders (ed.), *Mozley & Whiteley's Law Dictionary*, p. 192.)

tenementes in the said towne except inhabitantes in certeyn new built cottages by sufferance.¹¹³

Clearly the deponents were uncertain about the rights attached to new-built cottages. Although, as Kelfull deposed, common rights theoretically pertained only to ancient cottages, Searle stated that new cottages at Whittlesey were also commonable if their tenants were levant and couchant: this might explain how the number of commonable cottages at Whittlesey increased between 1603 and 1639. John Boyce, on the other hand, distinguished between *de jure* and *de facto* commoners. Inhabitants of certain new cottages were permitted to exercise common rights; such people held no land within the manors and were, presumably, squatters with scant means to support their families.

Access to the undrained fens was in practice, therefore, unrestricted. Manorial tenants had legal access and those who were not tenants were permitted access to the abundant resources, not least to prevent them becoming a charge on the parish.¹¹⁴ This was certainly the case at Brandon (Suffolk). When, in February 1622, jurors from Brandon reported to the commissioners of sewers that there were ‘foure skore & foure tenements wich doe freely comon’, they explained that there were also ‘Fifty foure householders & cottagers wich for there releife we doe suffer to comon’.¹¹⁵ Similarly, prior to enclosure at Whittlesey, sub-tenants and inhabitants of newly-built non-commonable cottages were permitted access the common fen; after enclosure, however, access was severely restricted. The 1639 Whittlesey enclosure agreement stated that allotments in the enclosed fen would be made to

¹¹³ TNA: PRO: E134/42Eliz/Hil2, deposition of John Boyce in answer to interrogatory number 15 for the plaintiffs, 17 January 1600.

¹¹⁴ Indeed, it would have been almost impossible to physically prevent people entering the vast common fens.

¹¹⁵ BL: Add MS 33466, f. 198, report of jurors of Brandon to the commissioners of sewers, February 1622.

‘every *tennante* of the said Mannours haveinge any Commonable Cottage or Messuage within the said Mannour theire heyres and Assignes’.¹¹⁶ Thus the allotment was made to the tenant, not the property. From thenceforth, in order to access the benefits of the fen, sub-tenants would have to negotiate with their landlord to rent the ten-acre plot; in theory at least, access to the fen was no longer freely available.

x. Definitions of common rights at Whittlesey

In addition to unstinted common grazing, commoners had ‘commons of fisshing & fowling with all maner of lawfull engins and common of Estever fodder turbery & wood’.¹¹⁷ These rights permitted the Whittlesey fenmen to obtain freely commodities that in many communities elsewhere had to be purchased. Most fenmen took advantage of the plentiful supplies of fish and waterfowl in the fens to supplement the sustenance of their household. Some went a step further, either because of poverty or market demands, and developed one or the other into their livelihood; hence the proviso that these rights should be exercised ‘with all maner of *lawfull* engins’. To increase their catch, fishermen dug ditches, erected weirs and, sometimes, deliberately created artificial shallows, all of which might adversely affect neighbouring communities.¹¹⁸ Fowling, by its very nature, was a hidden and

¹¹⁶ TNA: PRO: E125/24, p. 314, f. 12v, emphasis added.

¹¹⁷ TNA: PRO: E134/42Eliz/Hil2, deposition of Robert Searle, in answer to interrogatory number 13 for the plaintiffs, 17 January 1600.

¹¹⁸ Commissioners of sewers frequently dealt with complaints that members of neighbouring communities had stopped up or hindered the flow of a watercourse by setting nets or making weirs to catch fish. (A. M. Kirkus (ed.), *The Records of the Commissioners of Sewers in the Parts of Holland 1547-1603* (Lincoln Record Society, 54, Lincoln, 1959), p. xxviii.) For various medieval and early modern methods of catching fish, see Ravensdale, *Liable to Floods*, pp. 48-50. For methods used to catch both fish and fowl in Whittlesey’s fens in the twentieth century, see Phil Gray, *The Washlanders* (Lavenham, 1990), *passim*.

virtually silent occupation, conducted by means of nets, snares and decoys.¹¹⁹ Common of estovers permitted 'gathering of wood for fuel and for repairing dwelling houses and barns'.¹²⁰ Although the fens themselves were no longer heavily wooded, larger trees did grow on fen islands such as Whittlesey.¹²¹ Rights of fodder permitted gathering of vegetation suitable for animal feed and also turning cattle into the stubble of the common fields.¹²² The right of turbary, which allowed the cutting of turf or peat, provided inhabitants with free fuel for their homes.¹²³ They were not, however, entitled to dig turves for sale outside the manor.¹²⁴

In 1675, John Ground recalled that prior to drainage Whittlesey commoners had collected 'sedge Reeds hassocks [and] Wood' from the unenclosed fens.¹²⁵ Sedge comprised various coarse grassy, rush-like or flag-like plants growing in wet places. It was used for horse-collars, chair-bottoms and ridging thatched roofs; also for matting and fuel.¹²⁶ Reeds commonly grew in marsh and fenland areas. Once

¹¹⁹ Ravensdale, *Liable to Floods*, pp. 50-51. Unlike the cultivation of crops, neither fishing nor fowling required constant toil in order to be productive; indeed their pursuit of these occupations was such that fenmen appeared to outsiders to be idle. For example, in 1641, a supporter of a new drainage bill argued that 'those that live upon the fennes undreynd live a lazy and unusefull life to the common wealth exercizinge noe trade nor industry'. (TNA: PRO: SP16/480/88, a draft of arguments to be advanced in support of a bill for the Great Level, 1641.)

¹²⁰ Roger B. Manning, *Village Revolts: Social Protest and Popular Disturbances in England 1509-1640* (Oxford, 1988), p. 20. The *OED* defines 'estovers' as 'wood which a tenant is privileged to take from his landlord's estate so far as it is necessary for repairing his house, hedges, implements, etc'. For a detailed discussion of estovers, see L. Dudley Stamp and W. G. Hoskins, *The Common Lands of England and Wales* (London, 1963), pp. 47-48.

¹²¹ Indeed two place-names there, Eldernell (alder) and Bassenhally (*baest* – lime trees), indicate the presence of trees in the early history of the settlement. (Reaney, *Place-Names*, pp. 259-60.)

¹²² Necson, *Commoners*, pp. 310-11.

¹²³ Peat was burnt in blocks on open fires. Methods of digging and drying these blocks changed very little over the centuries. For an account of peat-digging in the nineteenth century, see Day, *Turf Village*.

¹²⁴ Elsewhere tenants were presented for over-digging and for selling outside the manor without a licence. (Ravensdale, *Liable to Floods*, pp. 52-53.) In 1695, Whittlesey inhabitants were forbidden to dig turves in half-severals (lands that were used in common for only part of the year). (CRO: 126/M6, court book of Whittlesey St Mary, 3 October 1695.)

¹²⁵ TNA: PRO: E134/27CarII/East28, deposition of John Ground of Whittlesey, labourer, aged 74, 5 April 1675.

¹²⁶ *OED*; D. Yaxley, *A Researcher's Glossary of words found in historical documents of East Anglia* (Dereham, 2003), p. 183.

gathered, they could be used for thatching or fuel or as laths for plastering on.¹²⁷

Hassocks, or hods, were firm tufts or clumps of matted vegetation, especially of coarse grass or sedge, such as occurred in boggy ground, which were used as an alternative fuel.¹²⁸ Such was the wide variety of benefits that accrued to the Whittlesey commoners in right of their commonable properties and that, prior to drainage, inhabitants of 'new-built' cottages were permitted to exercise 'by sufferance'.¹²⁹

Although manorial tenants at Whittlesey enjoyed extensive common rights within the common fields, common pastures and common fens, the exercise of such rights was not entirely unregulated since local by-laws defined the boundaries of acceptable behaviour and set fines for transgressions. Enacted, or rather, codified by the manorial courts, such by-laws delineated customary practice.¹³⁰ Although the earliest surviving by-laws for Whittlesey date from the 1690s, comparison with earlier by-laws from other fenland communities suggest that many of the former were long-standing regulations.¹³¹ Some were concerned with regulating farming practices, such as when and where cattle should be tethered or driven; others with maintaining the fields and fens, such as scouring and cleansing ditches and drains;

¹²⁷ *OED*. Ravensdale describes in detail various methods for gathering reeds and the uses to which they might be put. (Ravensdale, *Liable to Floods*, pp. 54-55.)

¹²⁸ *OED*. According to 'H. C.', an advocate of drainage, the fenman's fire was rendered 'noysome by the stink of smoaky Hassocks'. (H. C., *Discourse Concerning the Drayning of Fennes*, sig. A3.)

¹²⁹ TNA: PRO: E134/42Eliz/Hil2, deposition of John Boyce in answer to interrogatory number 15 for the plaintiffs, 17 January 1600.

¹³⁰ For the most recent general discussion of the management of lowland commons, see Shaw-Taylor, 'The management of common land'. For northern upland by-laws, see Angus J. L. Winchester, *The Harvest of the Hills: Rural Life in Northern England and the Scottish Borders, 1400-1700* (Edinburgh, 2000). For the establishment of manorial by-laws during the medieval period, see also W. O. Ault, *Open Field Farming in Medieval England: a study of village by-laws* (London, 1972).

¹³¹ No manor court books or rolls have survived from before 1642; a systematic search of the extant court books up to the 1690s has not revealed any by-laws dating from before 12 April 1694. (CRO: 126/M1-6, court books of the manors of Whittlesey St Andrew, Whittlesey St Mary and Coquinary.) For earlier fenland by-laws see, for example, Charles Brears, 'The Fen Laws of Common', *Lincolnshire Notes and Queries*, 20 (1928-29), pp. 58-64, 74-77; W. Cunningham, 'Common Rights at Cottenham & Stretham in Cambridgeshire', *Camden Miscellany*, 12 (Royal Historical Society, London, 1910), pp. 230-45, 261-87; H. E. Hallam, 'The Fen Bylaws of Spalding and Pinchbeck', *Lincolnshire Architectural and Archaeological Society Reports and Papers*, new series, 10 (1963), pp. 40-56.

and others with preventing or removing nuisances.¹³² The over-riding purpose of these by-laws, and their unwritten forerunners, was to enable the smooth running of the local customary economy and, by extension, to enable inhabitants to make their living from the fields and fens.

xi. Making a living at Whittlesey prior to drainage

As it was impossible to build houses in the undrained fen, Whittlesey, Eastrea and Coates were nucleated settlements in which the houses were laid out in streets.¹³³

Although this gave Whittlesey itself an urban appearance – inhabitants frequently referred to it as a town – this was, to all intents and purposes, a rural community dominated by farming.¹³⁴ Analysis of the status of testators in wills from 1600 to 1639 shows that of 169 men with ‘productive’ occupations, 80 per cent had occupations relating to the land, or water (see Table 3: 6 overleaf).¹³⁵

¹³² The Whittlesey by-laws were recorded in Whittlesey St Mary’s court book on 12 April 1694, 28 March 1695 and 3 October 1695. (CRO: 126/M6, unpaginated.) ‘Nuisances’ included people who smoked tobacco near thatched houses, hayricks and barns, and those who took in tenants or ‘sojourners’ who were not legally settled.

¹³³ In the Exchequer decree that confirmed the allotments after enclosure the location of each tenant’s commonable cottage is given by street. This provides a graphic description of the propinquity of the housing. (TNA: PRO: E125/24, p. 314, ff. 14v-26r.)

¹³⁴ See, for example, the petition that Whittlesey tenants sent to the Privy Council in the late 1590s, in which they drew attention to the plight of ‘at the least fower hundreth housholds in the said *towne* by the highe and unkinde overflowings of waters these three yeares last past’. (BL: Add MS 33466, f. 278, petition from Whittlesey tenants, late 1596 or early 1597.) Although Whittlesey was urban in appearance, it lacked a market. The nearest was at Peterborough.

¹³⁵ In general, the most useful documentary sources for the reconstruction of the economy of an early modern community are probate inventories. (See, for example, Levine and Wrightson, *The Making of an Industrial Society*; Victor Skipp, *Crisis and Development: An Ecological Case Study of the Forest of Arden 1570-1674* (Cambridge, 1978); Thirsk, *English Peasant Farming*; K. Wrightson & D. Levine, *Poverty and Piety in an English village: Terling, 1525-1700* (Oxford, 1979).) Such an approach is not possible for a study of Whittlesey prior to drainage because virtually all inventories from the diocese of Ely dated prior to the civil war have perished. Indeed, such a study is scarcely more viable for the forty years after enclosure in 1639 since, apart from two strays granted probate in 1651, Whittlesey inventories do not commence until March 1673. Although it is possible to extract some details of pastoral and agricultural activities from extant wills, detailed information from the 1620s and 1630s is rare because most wills were written by the vicar, William Mason, whose style was somewhat terse. In her study of three Cambridgeshire villages, Margaret Spufford draws attention to the paucity of inventories from Orwell and Willingham but was able to compensate for it because the wills from those communities were particularly full; a product, in part, of the fact that they were written by a variety of scribes. (Spufford, *Contrasting Communities*, p. 196.)

Table 3:6. Occupations designated in Whittlesey wills, 1600-1639

Occupation type	Occupation	No.	All %	Productive total	Productive %
productive					
farming	yeoman	17	7.5		
	husbandman	82	36.3		
	labourer	32	14.2		
	shepherd	2	0.9		
	fisherman	2	0.9		
	sub-total	135	59.8	135	80.0
food supply	baker	2	0.9		
	butcher	1	0.5		
	miller	3	1.5		
	salter	1	0.5		
	victualler	1	0.5		
	sub-total	8	3.9	8	4.7
crafts/trades	blacksmith/smith	6	2.7		
	boatwright	1	0.5		
	carpenter	2	0.9		
	thatcher	1	0.5		
	sub-total	10	4.6	10	5.9
clothing	cobbler/shoemaker	2	0.9		
	glover	1	0.5		
	hosier	1	0.5		
	tailor	10	4.4		
	weaver	2	0.9		
	sub-total	16	7.2	16	9.5
non-productive					
	gentleman	5	2.2		
	clerk	2	0.9		
	spinster	5	2.2		
	widow	45	19.9		
	sub-total	57	25.2	n/a	n/a
all	total	226	100.7	169	100.1

Source: Whittlesey wills in the Consistory Court of Ely as recorded in E. Leedham-Green & R. Rodd (eds), *Index of the probate records of the Consistory Court of Ely, 1449-1858* (3 volumes, British Record Society, London, 1994-1996).

Unsurprisingly, the extensive fens in the two manors played a major role in the economy of Whittlesey.¹³⁶ 'Primeval fen', otherwise known as 'car fen', was overgrown with rushes, reeds, shrubs and small trees; human effort and human neglect changed its surface vegetation long before the large-scale drainage works of the seventeenth century.¹³⁷ Over the centuries small-scale drainage and mowing, or, in areas that were sufficiently dry in summer, mowing and grazing, improved primeval fen. 'Once the scrubby growth of bushes and small trees is cleared, control of the intervals between mowing determines which crop develops at the expense of the others, seeds, sedge, flags or grass.'¹³⁸ Thus fen ground varied, each type supporting different vegetation and having different uses.¹³⁹ Within Whittlesey's fens, Northea (or, Northey) was a 550-acre 'mowffen', which was grassland mown for fodder; Lipnea Gravell, Kingsdelfe Gravell, Long Gravell, Northea Gravell and Stonhall Gravell yielded sand and gravel; and Lipnea Hards, standing a few feet higher than the surrounding fen, were winter grounds as well as summer, supplying pasture all year round.¹⁴⁰ There were also at least thirty holts, which were square plots where osiers were grown.¹⁴¹ The remainder was untamed, undrained fen.¹⁴²

¹³⁶ The 1603 rental stated that the exact acreage of fen in the manors was 18,689. (CUL: Add MS 3826, ff. 5r-6v.)

¹³⁷ Ravensdale, *Liable to Floods*, pp. 23, 39.

¹³⁸ Ravensdale, *Liable to Floods*, p. 45.

¹³⁹ The most detailed study of different types of fenland is to be found in Ravensdale, *Liable to Floods*, pp. 39-84.

¹⁴⁰ There is a detailed description of the Whittlesey fens in Hayward's 'Survey of the Fens', taken in 1636, which has been published in full in Samuel Wells, *The History of the Drainage of the Great Level of the Fens, called Bedford Level; with the Constitution and Laws of the Bedford Level Corporation* (2 volumes, London, 1830), 2, pp. 141-253; the survey of Whittlesey's fens is on pp. 212-20.

¹⁴¹ CUL: Add MS 3826 lists sixteen tenants who held holts in 1603. For the definition of a holt, see I. H. Adams, *Agrarian landscape terms: a glossary for historical geography* (Institute of British Geographers Special Publication 9, London, 1976), p. 111. 'One of the lesser, but most lucrative of the fen products', osiers had a variety of uses, the greatest of which 'were probably in woven hurdles, the construction of bird-traps and decoys, fish-traps and weirs, and above all in the baskets of all kinds used by the peasantry in farming and at home'. (Ravensdale, *Liable to Floods*, p. 57.)

¹⁴² According to Hayward, the largest of Whittlesey's common fens was 'a great comon Fen ... called by diverse names in diverse places: viz Glasmore, Middlemore, Flegcrofts, the Brecks and Thickfen' (10,526 acres).

xii. Livestock in the fens

As we have already seen, in 1600 deponents stated that tenants of commonable tenements were entitled to ‘commons for all manner of cattle sance number’.¹⁴³

From documents drawn up in 1626, however, it appears that legal common of pasture was only exercised in the common arable fields after harvest, in the skirts of those fields, in King’s Delf and, after mowing, in Northea. In 1626, a change in the customary number of commonable beasts allowed in those commons was agreed: thenceforth common of pasture would be permitted to ‘the kind and number of rateable Cattle as shall be yearly rated and ordered by the homage’.¹⁴⁴ Such stints, however, did not apply to grazing within suitable areas in the vast common fens. As Ravensdale notes, pasturing in the fens was risky in the winter, but not impossible, since animals could be moved to ‘higher’ grounds if necessary since ‘each fen had parts that were above the reach of normal winter floods, islands of refuge, enabling cattle to be risked for pasture there’.¹⁴⁵

Within the manors were over 5,000 acres of meadow.¹⁴⁶ The lords of the manor owned considerable areas of this meadowland, parts of which they leased to several tenants jointly; some meadow was held by individuals; the remainder was held ‘in common, access to which was regulated by the manor court’.¹⁴⁷ This regulation included the practice of paying a ‘common amercement’ annually to the

¹⁴³ For the most recent overview of common grazing rights in lowland England, see Shaw-Taylor, ‘The management of common land’, pp. 70-71.

¹⁴⁴ TNA: PRO: C78/294/3, agreement between Lady Elizabeth Hatton *et al.* and the Whittlesey tenants, 12 May 1626. Although this changed the number of animals that tenants could legally pasture within the fields and grazing fen, it is unclear whether this was an increase or decrease. Since this agreement comprised twenty-three articles, many of which granted concessions to the tenants, this clause did not *necessarily* decrease the stint. In 1694, the homage of the manor of St Mary’s set the stint at ‘Seaven Cows or five Mares or Geldings or fourteen two years old Beasts or one and twenty Yearling Calves or Thirty sheep’. (CRO: 126/M6, court book of Whittlesey St Mary, 12 April 1694.)

¹⁴⁵ Ravensdale, *Liable to Floods*, p. 46.

¹⁴⁶ CUL: Add MS 3826, ff. 5r-6v.

¹⁴⁷ The various acreages of meadow are listed in the survey of 1603 and the complicated management arrangements are set out in the agreement of 1626. (CUL: Add MS 3826, ff. 5r-6r; TNA: PRO: C78/294/3.)

lords for a small acreage of land within the common meadows. Presumably those tenants of commonable cottages who paid an amercement were prepared to pay for meadow, and therefore hay for fodder, in case the undrained fen was not fit for grazing in the 'wet' winter months.¹⁴⁸

In most fenland communities the lush grazing meant that cattle made the largest contribution to the local economy, not only dairy cows but also beef cattle.¹⁴⁹ Horses were also reared in large numbers. Whilst nearly all farmers used draught horses for ploughing, others bred horses for the outside market.¹⁵⁰ Farmers with large herds of cows, cattle and/or horses kept animals as part of a commercial venture that provided their income.¹⁵¹ Others reared beef cattle or horses and had one or two cows to supply their family's requirements. For poor households, whose only animals were one or two cows, the milk and dairy products that they provided were vital for the family's sustenance.¹⁵² We have already noted that plentiful grazing was available in Whittlesey but, in the absence of early seventeenth-century inventories, it is impossible to ascertain the actual numbers of animals owned by individual inhabitants. From bequests in wills, however, it is clear that some did

¹⁴⁸ The amercement was charged at 2d per acre of meadow. (CUL: Add MS 3826, f. 8r.) In 1603, there were 643 tenants. The tenants of 199 land-holdings never paid a common amercement: these holdings were mostly, but not exclusively, fullands and fractions of fullands. (There is no 'common amercement' column in those sections of the rental.) Of the remaining 444 holdings, 135 have no entry in the common amercement column in the rental but the tenants of the other 309 holdings did pay a common amercement. Payments ranged from 1½d (for three-quarters of an acre) to 8d (for four acres) although 276 tenants paid 4d or less.

¹⁴⁹ For cattle in the Lincolnshire fens, see Thirsk, *English Peasant Farming*, pp. 34-35, 138-39; for cattle in the Cambridgeshire fens, see Ravensdale, *Liable to Floods*, pp. 60-63.

¹⁵⁰ Thirsk notes that horses bred in the Lincolnshire fens were sold to work in the Nottinghamshire coal mines and in the Derbyshire lead mines and to Yorkshire breeders. (Thirsk, *English Peasant Farming*, p. 32.)

¹⁵¹ As we have already noted, Overton has calculated that anyone owning four or more milk cows was carrying out dairying on a commercial scale. (Mark Overton, Jane Whittle, Darron Dean and Andrew Hann, *Production and Consumption in English Households, 1600-1750* (Abingdon, 2004), p. 53.)

¹⁵² In the late-eighteenth century the poor valued the benefits that they derived from their cows at around 5s or 6s per week, which compares favourably with agricultural labourers' weekly wages of around 7s to 8s per week. (Jane Humphries, 'Enclosures, Common Rights, and Women: The Proletarianization of Families in the Late Eighteenth and Early Nineteenth Centuries', *Journal of Economic History*, 50 (1990), p. 24.)

indeed keep dairy herds and others reared cattle and/or horses.¹⁵³ The farming practices of those testators who bequeathed only one cow, however, is somewhat ambiguous. Some may have been poor and only had one cow to bequeath, whereas others may have owned other cattle that they did not bequeath specifically.¹⁵⁴

xiii. A traditional community?

According to the 1603 survey, there were over 1,500 acres of arable land within the manors.¹⁵⁵ The common fields of Whittlesey, although small compared with the area of fen and meadow, were relatively large, comparing favourably in size with those of other fenland communities.¹⁵⁶ In the neighbouring manor of Thorney, for example, there were only about 400 acres of arable but 17,000 acres of fen.¹⁵⁷ The field book that accompanies the Whittlesey survey describes every holding in each of the six common fields – Bassanally, Lottersey, Stonall, Church, Coates and Eastrea Fields (see Map 3:1).¹⁵⁸ These were divided into some 213 furlongs of varying acreages,

¹⁵³ For example, in the late 1630s Henry Bailey bequeathed four calves, a heifer and a filly; William Cattell bequeathed his four *best* mares or colts, one cow and a calf; John Elmer bequeathed four cows, a calf and a heifer, and Edward Kelfull bequeathed four calves, a cow and a heifer. (CRO: wills of Henry Bailey, yeoman, dated 27 January 1640; William Cattell, yeoman, undated but proved 27 March 1639; John Elmer, husbandman, dated 18 August 1638; Edward Kelfull, husbandman, dated 8 June 1639.) Very few Whittlesey inhabitants kept sheep because the nature of the ground in the fens caused sheep's feet to rot. Out of seventy-six wills that mention animals, only seven specifically mention sheep; presumably these people pastured their sheep on drier land.

¹⁵⁴ For example, the only animal that John Gibbs, a labourer, bequeathed in his nuncupative will was one cow; whereas the only animal specifically bequeathed by John Watson was 'one of my best cows'. (CRO: wills of John Gibbs, labourer, dated 12 October 1625, proved 6 April 1626; John Watson, dated 20 June 1639, proved 12 July 1639.)

¹⁵⁵ CUL: Add MS 3826, ff. 5r-6v.

¹⁵⁶ In her study of Lincolnshire farming, Joan Thirsk comments that, given the nature of the land in fenland areas, it was not surprising that the proportion of arable to pasture (i.e. meadow and fen) was low. (Thirsk, *English Peasant Farming*, p. 23.) In Lincolnshire the proportion of arable ranged from 4 per cent to 42 per cent (total acreages ranging from 206 to 1,214 acres). At Whittlesey the proportion of arable to pasture was only 6 per cent.

¹⁵⁷ H. C., *Discourse concerning the drayning of Fennes*, sig. A3.

¹⁵⁸ CUL: Add MS 3826, ff. 37r-145v. The fields are clearly shown on a manuscript map (undated, but c.1800), held in the Cambridge University Library Map Room and redrawn here as Map 3:1. (CUL: Map Room, MS Plan 554.) Remnants of the fields can still be seen on a modern Ordnance Survey map. The survival of such a detailed early modern field book is rare. (*Ex info.* David Hall.) For a summary of the survival of field books, maps, etc. in neighbouring Northamptonshire, see D. Hall, *The Open Fields of Northamptonshire* (Northamptonshire Record Society, 38, Northampton, 1995).

containing more than 4,000 strips in total, three-quarters of which comprised only half an acre.¹⁵⁹ Although some tenants possessed adjacent strips, the holdings of the majority were scattered throughout the various fields; suggesting that very little engrossment had occurred.¹⁶⁰ These fields, situated on 'higher' ground within the inhabited islands, were not affected by fenland drainage schemes.

Early seventeenth-century wills indicate that tenants grew wheat, rye, oats, barley, peas or beans in their strips in the common fields.¹⁶¹ It is, however, impossible to reconstruct how the cultivation of these crops was organised in the fields because the court books, which commence in the 1640s, give no indication of cropping practices and, as we have seen, by-laws were not *recorded* before 1694. Although there were six fields, even the method of crop rotations cannot be reconstructed since Stonall and Church Fields were situated to the west of Whittlesey, Bassanally and Lottersey Fields were to the east of the town, and Eastrea and Coates Fields were situated between those two settlements.¹⁶² Suffice it to say that the common field system in Whittlesey worked so successfully that these fields

¹⁵⁹ Next to many of the entries in the field book are the letters 'A' ('Andrew) or 'M' ('Mary') indicating to which manor that particular strip belonged. Adjacent strips were frequently in the opposite manor.

¹⁶⁰ The entries in the field book are so detailed that the strips of individual tenants can be pinpointed exactly. There are some discrepancies between the holdings listed in the rental and the area of the strips cultivated by individuals listed in the field book. This may be because whereas the former document identified the person whose name appeared on court roll as the tenant who rented a particular holding, the latter recorded who was responsible for cultivating each strip at that time.

¹⁶¹ Of the seventy Whittlesey inventories used in this study, two were granted probate in 1651 and the remaining sixty-eight were made between 1673 and 25 March 1681. It should be emphasised that this is *not* a sample but the full complement of Whittlesey inventories from that period. This being the case, it is not possible to search inventories for evidence of farming practices in the Whittlesey manors before drainage. Some of the earlier wills, however, do contain such evidence. For example, the will of William Coy, dated 8 January 1639, mentions wheat, peas and barley; the will of Thomas Ground, dated 2 February 1631, mentions barley, corn and peas.

¹⁶² For the various crops grown in the common fields of Denney, Cottenham and Landbeach during the fourteenth century, see Ravensdale, *Liable to Floods*, pp. 116-17. For cropping at Willingham in the sixteenth and seventeenth centuries, see Spufford, *Contrasting Communities*, pp. 128-29. For crops grown in the Lincolnshire fens, see Thirsk, *English Peasant Farming*, pp. 135-36.

continued to be cultivated in much the same way for two more centuries, until they were eventually enclosed in 1844.¹⁶³

The continued existence of the six fields and the lack of large-scale engrossing suggest that the agricultural pattern within the manors had altered very little since its establishment.¹⁶⁴ Indeed, given that strips belonging to the two manors were intermingled in the fields and that the manorial and parish structures in Whittlesey were interrelated, it is clear that this field-system preceded the foundation not only of the manors, but also of the parishes themselves.¹⁶⁵ Here then, at the beginning of the seventeenth century, was an ancient landscape that had scarcely changed for perhaps a millennium. This was a community that, on its literal surface at least, was traditional in organisation and rhythm; whose roots reached far beyond even the legal memory of man. Its inhabitants, therefore, were accustomed to communal activity and, as we have seen, were well acquainted with customary practice. Logic might dictate that drainage would be welcomed because it would alleviate numerous problems associated with the seasonal flooding of the fens, which included the drowning of cattle as well as of land. Enclosure, the logical corollary to drainage, however, would not be welcomed since that process would extinguish forever the inhabitants' jealously guarded customary rights in those fens.

¹⁶³ Whittlesey Enclosure Act: 3 & 4 Vic. c. vi, amended by 4 & 5 Vic. c. xiii. The Enclosure Award, made in 1844, divided 1,550 acres of open arable fields and 2,400 acres of pasture amongst 332 named 'proprietors', i.e. legal commoners. (*VCH Cambs*, 4, p. 125.) The congruence of the number of tenants and the acreage in the common fields in the 1840s and in 1603 is remarkable.

¹⁶⁴ For a discussion of enclosing and engrossing in the early modern period, see J. Thirsk, 'Enclosing and Engrossing', in J. Thirsk (ed.), *AHEW*, 4, 1500-1640 (Cambridge, 1967), pp. 200-55.

¹⁶⁵ The debate over the origins of field systems in England is summarised in D. Hey (ed.), *The Oxford Companion to Local and Family History* (Oxford, 1996), sub 'Field systems'. Whilst the wide variety of systems renders generalisations pointless, local research increasingly demonstrates that in many places field systems were deliberately planned long before the Norman Conquest. For detailed discussion of the nature and regulation of common fields see, for example, Joan Thirsk, 'The Common Fields', *Past & Present*, 29 (1964), pp. 3-25. For the most recent discussion of the origins of common fields and the proposal of a new model for the introduction of common fields in England, see Susan Oosthuizen, *Landscapes Decoded: The origins and development of Cambridgeshire's medieval fields* (Hatfield, 2006).

Chapter 4: Enclosure and resistance in Duffield Frith c.1585 to 1700

Part 1: Public policy – a testing ground for royal projects

As we have seen, under Elizabeth several commissions were issued to investigate the viability of various projects to raise much needed revenue from the Frith; that little came of these proposals was largely thanks to objections raised by tenants well-versed in local customs. The Tudor administration bowed to the force of their argument that restrictions imposed on inhabitants' access to the Frith and, by extension, on their common rights, would damage their livelihoods and so cause impoverishment and dislocation, which in turn would threaten the social and economic equilibrium of the neighbourhood. The Stuart administration, however, had no such qualms about riding roughshod over tradition and practice. It made desperate attempts to replenish the royal coffers not only to meet debts inherited from the last decade of Elizabeth's reign arising from the war with Spain and the revolt in Ireland, but also to cover unplanned expenditure resulting from James' generosity to courtiers, the general extravagance of the court, and the cost of wars against France and Spain in the 1620s.¹ It is hardly surprising, therefore, that such a large forest, with its expanding population, and the adjacent royal manor should attract the attention of crown officials and projectors alike. Whereas many projects sought to reduce unruly forest populations by 'transplanting' them elsewhere amongst men of 'better worth', crown policy regarding Duffield was aimed at

¹ R. B. Outhwaite, 'Dearth, the English Crown and the "Crisis of the 1590s"', in Peter Clark (ed), *The European Crisis of the 1590s* (London, 1985), pp. 23-43. P. A. J. Pettit, *The Royal Forests of Northamptonshire: A Study in their Economy, 1558-1714* (Northamptonshire Record Society, 23, Gateshead, 1968), p. 50.

exploiting, rather than inhibiting, the growth of this community.² As we shall see, income, rather than incomers, was the crown's overriding concern.

Although Richard Hoyle and his collaborators have recently provided a comprehensive survey of the origin and nature of crown projects, the history of what actually happened on individual estates remains obscure.³ From surviving records relating to Duffield, however, it is possible to reconstruct the mechanics of some of those projects since it appears to have been a testing ground for several of them. At the beginning of the reign of James I the duchy's actual revenue from the manor and forest of Duffield fell far below its potential. Moreover, Duffield possessed apparently lucrative assets that the financially straitened crown needed to exploit: extensive woodlands, numerous customary tenants, a valuable manor and a vast unenclosed forest. In an attempt to realise these assets, the Stuart administration implemented four projects: the sale of 'woods' in the Frith; the sale of copyholds; the sale of the manor; and the 'improvement' of the Frith. Since each of these projects flew in the face of local custom, it is hardly surprising that they met with resistance in various forms and achieved few positive results for the crown. Although the four strands became interwoven over time, it has been possible to unravel them due to the survival of documentary evidence both in the duchy's extensive archive and elsewhere.

² See, for example, John Norden's letter to Lord Treasurer Salisbury, written in May 1612, in which he recommends that inhabitants of forests should be 'remouved from their obscure dwellinges, And be transplanted into the societies ... where they may learne to live accordinge to the lawes ... [or] ... to make a more full plantacion in theis convenient places, by dwellinges for men of better worth and cariage'. (Hatfield House, Cecil Papers, 132, no. 145.)

³ R. W. Hoyle (ed.), *The Estates of the English Crown, 1558-1640* (Cambridge, 1992).

i. The sale of woods

In 1629, the then Surveyor-General of the duchy, Sir Thomas Fanshawe, recalled that, twenty years earlier ‘when the righte honorable Earle of Salisburie was treasurer of England there was a proiecte set on foote for the sale of his Maiesties woodes’ and that commissions for surveying and selling woods were issued accordingly.⁴ Locals confirmed that at that time ‘a great store of timber trees, woods and underwoods’ was growing in Duffield Frith.⁵ In 1608, commissioners, led by Sir John Bentley, surveyed and valued the woods in certain parts of the Frith at over £2,500.⁶ About a year later, Rock Church and others were commissioned to sell the king’s woods there, on the condition that whoever purchased the wood should fell and cart it away within a year; whatever remained would revert to crown ownership.⁷ The earl of Shrewsbury, who was High Steward of the Frith, purchased the woods from Walter Gibson, a member of the second commission, at the reduced price of about £1,790.⁸ Shrewsbury’s cut-price deal aroused Salisbury’s suspicions and in May 1609 Church was sent to investigate. He reported two possible explanations. Firstly, that the timber in the Frith was of poor quality: although Shrewsbury had indeed shown Church some very low grade timber, the latter was unconvinced that it had actually

⁴ TNA: PRO: DL4/79/55, examination of Sir Thomas Fanshawe, 3 July 1629. For a biography of Fanshawe, see Sybil M. Jack, ‘Fanshawe, Sir Thomas’, *ODNB*. He was ‘a key figure in the attempts to improve the king’s revenues and had much to do with the financial policy whereby forests and moors were exploited’.

⁵ See for example, TNA: PRO: DL4/79/55, examination of William Johnstone, 22 October 1629. Presumably there had been some recovery from the depredations of Elizabeth’s reign mentioned above.

⁶ TNA: PRO: DL4/79/14, deposition of Francis Bruckshawe, 24 September 1629; TNA: PRO: DL1/319 (unnumbered), answer of Robert Treswell and Thomas Jaye to the bill of William, earl of Newcastle, 25 June 1629; TNA: PRO: DL4/79/55, examination of Robert Cooke, 28 September 1629. The other commissioners were John Whitehall and William Deane, steward of the Frith.

⁷ In his tract on woodland husbandry, Church later referred to his work as a royal surveyor: ‘my late circuit Northward for Survey and sale of some of his Maiesties Woods’. (R. C. *An olde thrift newly revived* (London, 1612), p. 21.)

⁸ TNA: PRO: DL1/319 (unnumbered), answer of Robert Treswell and Thomas Jaye to the bill of William, earl of Newcastle, 25 June 1629. Treswell claimed that Gibson was not one of the commissioners but Fanshawe said that he was. (TNA: PRO: DL4/79/55, examination of Sir Thomas Fanshawe.)

come from the Frith. Secondly, Bentley claimed that he had overvalued the timber to deter prospective purchasers: Church concluded that if this were true, later sales would necessarily have been at lower rates.⁹ Despite the supposed poor quality of the trees and the condition stipulated in Church's commission, Shrewsbury and his heirs continued until 1629 to cut down the timber growing in the woods that he had 'purchased'. Whereas the crown had intended a one-off sale of timber in the Frith, Shrewsbury, disingenuously or otherwise, believed that he had purchased the timber rights forever, and long used the trees for fuel and material 'in Diverse and sundry Iron workes, forges and buildinges in the sayd Countie of Derby', including his ironworks at Hopping Mill, near Makeney.¹⁰

This discrepancy between intent and practice only came to light when, in March 1629, Charles I, 'havinge occasion to rayse a some of money for his necessarye uses & expences out of the sale of woods uppon his Dutchie', appointed commissioners to sell woods in Duffield.¹¹ They found not only that few trees remained standing, but also that the earl of Newcastle, as Shrewsbury's executor, was claiming the timber rights for himself. Despite Newcastle's attempt to prove his

⁹ Hatfield House, Cecil papers, 132, no. 60, Rock Church to the earl of Salisbury, 17 May 1609. Events suggest that Shrewsbury was abusing his position as High Steward. He had appointed Bentley as his deputy and steward in Duffield in March 1608 to replace Bradshaw. Bentley and Shrewsbury may have colluded over the wood sale. (G.R. Batho (ed.), *A Calendar of the Shrewsbury and Talbot Papers in Lambeth Palace Library and the College of Arms*, 2, *Talbot Papers in the College of Arms*, (Derbyshire Record Series, 4, London, 1968), M, f. 504.)

¹⁰ TNA: PRO: DL1/319 (unnumbered), bill of William Cavendish, earl of Newcastle *versus* Robert Treswell and Thomas Jaye, 23 June 1629; TNA: PRO: DL4/79/14, examination of Andrew Clayton, 24 September 1629. On this occasion the commissioners were Robert Treswell, his son Andrew and two local justices. Hammersley has noted that in many areas, although vast quantities of trees were needed to supply sufficient charcoal to fuel the furnaces of iron forges, most iron-masters were careful not to destroy woodlands as these resources were vital to their business. It was contemporary observers who, seeing the short-term effect of such fellings, feared that woodlands were being permanently depleted. (See G. F. Hammersley, 'The Charcoal Iron Industry and Its Fuel, 1540-1750', *Economic History Review*, 2nd series, 26 (1973), pp. 593-613, especially p. 612.) This was clearly not the case in Duffield, where the woodlands *were* permanently depleted.

¹¹ TNA: PRO: DL1/319 (unnumbered), answer of Robert Treswell and Thomas Jaye to the bill of William Cavendish, earl of Newcastle, 25 June 1629.

claim in the duchy court, the duchy nonetheless sold £600-worth of timber to Thomas Jaye in 1629.¹²

Local inhabitants objected to both the original ‘sale’ of woods to Shrewsbury and the later sale to Jaye on the grounds that they contravened local custom. Sometime in 1612, Henry Gregson and two companions had visited the earl to express local opposition to the sale. Gregson told him that

tyme out of mynd as hee hath heard auntient men say that the kinges Tenautes had Common of Estovers within the said wardes & Forrest and alsoe Tymber for their houses Fireboote plough boote & tynsill for their Ringe Fences Bridges over Rivers within the said Frith & for many other Comon & necessarie thinges.¹³

In April 1630, following the sale of woods to Jaye, Sir Edward Leech, the then lord of the manor of Duffield, stopped the workmen felling trees, claiming that he had purchased Chevin ward together with the manor and that his tenants were entitled to common of estovers there.¹⁴ Felling resumed in May 1630, following the duchy court’s ruling in Jaye’s favour.¹⁵ Heedless of the tenants’ claims of common rights, the crown had forged ahead with both sales. Although they raised nearly £2,400, they not only caused local discontent, but also rendered the depleted timber stock virtually worthless. Indeed, considering Salisbury’s initial project for selling crown woods, Fanshawe found these particular sales ‘soe preiudiciall’ to the crown that he complained about them.¹⁶

¹² TNA: PRO: DL5/30, f. 307v, order issued by the duchy court, undated but in Easter Term, 1630. The court eventually ruled that the earl had no right to the woods and Jaye was permitted to convert timber into charcoal, taking any necessary materials from the common waste in Chevin ward.

¹³ TNA: PRO: DL4/79/14, deposition of Henry Gregson, 24 September 1629. Bruckshawe and Taylor’s depositions are similar. At Duffield, ‘common of estovers’ was the right to take wood ‘for repaire of their houses buildings & fences’. (TNA: PRO: DL4/79/14, deposition of John Taylor, 24 September 1629.) There is no indication whether the wood so collected was fallen wood or whether tenants were permitted to cut it.

¹⁴ TNA: PRO: DL5/30, ff. 300v-301r, 4 May 1630. For Leech’s purchase of the manor, see Chapter 4, part 1, section iii, ‘The sale of the manor’. The duchy court ruled in Jaye’s favour and confirmed that Leech had purchased only the manor and had no entitlement to the Frith.

¹⁵ TNA: PRO: DL5/30, f. 307v, order issued by the duchy court, undated but in Easter term, 1630.

¹⁶ TNA: PRO: DL4/79/55, deposition of Sir Thomas Fanshawe.

ii. Compositions for fines and the sale of copyholds

During the early years of James's reign, royal administrators instigated surveys of the crown's estates to evaluate its annual landed income.¹⁷ In May 1608, the earl of Salisbury launched an initiative to increase and then confirm entry fines on both copyholds for lives and copyholds of inheritance and thus cut through all customary levels of fining.¹⁸ Hoyle comments that 'the audacity of Salisbury's policy is astounding. ... He completely ignored local manorial customs in favour of taking fines at the market rate'.¹⁹ Commissioners were to visit crown manors and make surveys and valuations of copyhold tenancies, new fines would be calculated on the current value of holdings and all tenants of the manor would then agree to a composition for fixed fines at these rates.²⁰ Regarding copyholds of inheritance, the crown's policy was such that on manors where tenants claimed that entry fines were certain but could not prove it, the onus was on the crown's officers to prove otherwise, the fines being respited in the interim.²¹ The fact that in 1588 the Duffield tenants had backed down from having their fines fixed did not, therefore, disadvantage their successors twenty years later.²² When, in 1608, the manor was targeted in the crown's policy of increasing copyhold fines, tenants *claimed* that their

¹⁷ For the conduct and purpose of these surveys, see R. W. Hoyle, "'Shearing the hog': the reform of the estates, c.1598-1640", in Hoyle (ed.), *Estates of the English Crown*, pp. 204-27.

¹⁸ TNA: PRO: SP14/32, no. 76, quoted at length in Hoyle, "'Shearing the hog'", p. 237. See also R. W. Hoyle, "'Vain Projects': The Crown and its Copyholders in the Reign of James I", in John Chartres and David Hey (eds), *English Rural Society, 1500-1800: Essays in Honour of Joan Thirsk* (Cambridge, 1990), pp. 73-104, especially pp. 79-81.

¹⁹ Hoyle, "'Vain projects'", p. 81.

²⁰ 'In the case of copyholds of inheritance, the commissioners were again to gauge the value of the tenement and where the copyhold paid a heriot, they were to take fines at a rate of 1.5 years' value, and, where not, 2 years' value.' (Hoyle, "'Shearing the hog'", p. 237.)

²¹ 'Where the tenants claimed a certain custom of fining, it was to be accepted by the commissioners only if it was evidenced by the court rolls of Henry VII and earlier. If the tenants maintained their custom in the absence of such proof, the tenants were to be admitted but the fines respited until the King's counsel was satisfied by the tenants' claims.' (Hoyle, "'Shearing the hog'", p. 237.)

²² For a dispute between a private landlord and his tenants concerning fixed entry fines, see Peter Large, 'Rural society and agricultural change: Ombersley 1580-1700', in Chartres and Hey (eds), *English Rural Society*, pp. 105-37.

finer were certain but as they could not prove this, fines then due there were respited.²³

Salisbury's project ran into difficulties, not least because crown tenants were not backward in 'arguing the fine detail of their manorial customs'.²⁴ Eventually the tenants of just twenty-six manors took advantage of the offer to compound for fixed entry fines.²⁵ Although the tenants of Duffield did not compound for their fines, those of neighbouring Ireton Wood, who intercommoned in Hulland ward, did so.²⁶ In addition to their fines, the tenants of the twenty-six manors had 'their claimed customes confirmed by Decree' of the duchy court in July 1620.²⁷ These confirmed customs included the right of tenants of Ireton Wood to common *anywhere* within Hulland ward. When the tenants of Duffield later challenged the enclosures, they appropriated this confirmation for themselves and claimed that Hulland ward could not be enclosed because the commoners there were entitled to common within the whole ward, not just two-thirds.²⁸

Confirmation of fines was not the only project implemented in an attempt to raise income from crown tenants. In the summer of 1603, it had been suggested that

²³ TNA: PRO: DL44/1147 includes 'A Particular of such Fynes uppon Surrenders within the Mannours [at Duffield] as are due to his Maiesties since the Sixte yeare of his [James I's] Raigne of England &c'. See below for later attempts to collect these respited fines.

²⁴ Hoyle, "Vain projects", p. 82.

²⁵ Hoyle, "Vain projects", p. 104, Appendix 2. This is a list of the compositions made on the duchy of Lancaster estates, 1618-1621.

²⁶ TNA: PRO: DL5/28, ff. 368v-380v, decree confirming an agreement between the king and customary tenants of the manors of Wirksworth *cum membris*, and Brassington, Bonsall and Ireton Wood *cum membris*, 5 July 1620; HLRO: PO/PB/1/1662/14C2n55 (1662), Private Act, 14 Charles II, c. 23, 'An Act for Confirmation of the Estates of several Tenants and Copyholders of the Manors of Rannes [*recte* Raunds], Irchesten [*recte* Irchester], [...], and several other Manors, Parcels of the Duchy of Lancaster'. The tenants of each manor agreed to pay a fixed sum in exchange for having their fines made certain, half of which was to be paid when the decree was issued in the duchy court and the second half when the decree was ratified by an act of parliament. The necessary act of parliament was not passed until 1662. The composition was set at thirty-five years' ancient rent. (The ancient rent at Ireton Wood was £5 3s 10d ob q *per annum*.) In addition to confirming that the tenants of Ireton Wood were entitled to common anywhere in Hulland Ward, the decree also confirmed that all copyholdings then established in the manor would be deemed ancient copyholds. (TNA: PRO: DL5/28, f. 375v.)

²⁷ TNA: PRO: DL5/28, ff. 368v-80v; quotation from HLRO: PO/PB/1/1662/14C2n55 (1662).

²⁸ TNA: PRO: DL5/36, ff. 256v-57r, 4 June 1663.

all copyholders on royal estates should be sold their freeholds.²⁹ Although attempts were initially made to sell freeholds to duchy tenants in the forest of Clitheroe, the project stalled and was shelved. In 1611 it was revived and the decision was taken to enfranchise copyhold tenants on the duchy of Lancaster's northern estates.³⁰ On 12 March, Thomas Fanshawe, then the duchy's Auditor, was instructed to carry out a general survey of the duchy's copyholds thereby establishing the details of the tenants' customs. Although the final records of Fanshawe's proceedings have not survived, his itinerary in the North (from 27 May to 26 August) and in the North Midlands (from 24 September to 11 October) can be reconstructed from his extant account of expenses.³¹ Usually he visited each manor twice: firstly to appoint a jury to enquire into copyholds and customs; and secondly to collect the jury's findings, and, if the copyholders agreed, to make a composition for their fines and consequently enfranchise them. Thus, on 3 June, Fanshawe was at Duffield for 'empanelling of Juries of Survey for the Mannors in Duffield frith' and, on 18 July, he and the other commissioners 'mett for the assessing of the Fines of the Tenautes of Duffield frith'. Their second meeting was inconclusive and on 21 August, for the third time, he was 'at Duffield to meet with the Tenautes there'. This was the only such extra visit in the entire itinerary.

Being simply a list of expenses, Fanshawe's account in the duchy's archive does not describe the discussions that took place during his various meetings. There is, however, a stray document in the Derbyshire Record Office that elucidates the proceedings at Duffield. This document, signed by Fanshawe himself, records

²⁹ The following is a summary of Hoyle, "Shearing the hog", pp. 233-41, except where noted otherwise. Hoyle's first exploration of the enfranchisement of crown's copyholders is to be found in Hoyle, "Vain Projects".

³⁰ Hoyle, "Shearing the hog", p. 241.

³¹ TNA: PRO: DL28/33/14A (unpaginated). (The reference DL41/33/14A, given in Hoyle, "Shearing the hog", p. 242, is incorrect.)

twenty-one points raised by the Duffield jurors together with his responses to them.³² Many of these questions, having described various local customs attached to copyholdings, sought clarification of copyholders' entitlements; others tested whether enfranchisement might disadvantage them.³³ The jurors were not named, but Anthony Bradshaw's was almost certainly the leading voice.

The tenants wanted time to consider the implications of any composition for their tenorial customs. In his verses of 1588, Bradshaw had claimed that the 'exchange of copyhold for freehold' could lead to the forfeiture of a tenant's land.³⁴ The exact nature of such an exchange is unclear; indeed, Bradshaw himself admitted that this forfeiture 'may seeme strange'.³⁵ He had already stated that copyhold land sold outside the manor court would be forfeited to the lord, so perhaps this referred to the illegality of any exchange, that is, sale, of copyhold land for freehold land made without the recognition of the manorial court. Alternatively, it may have meant that any attempt to treat copyhold land as if it were freehold, that is, convert (exchange) its status, would be illegal unless it were done within the court.³⁶ Bradshaw was probably one of the Duffield jurors convened by Fanshawe in 1611. Perhaps the new royal initiative to convert copyholds to freeholds revived his uneasiness over manorial customs relating to the exchange of copyhold for freehold, thereby prompting the detailed questions on this issue.

³² DRO: D5195/1/1/1, catalogued as 'Duffield Frith Customs and Laws 1611'. The documents catalogued under D5195 are a miscellaneous collection relating Duffield's customs but these documents were *not* collected by Anthony Bradshaw, whose papers are catalogued under D2402 AP/Z.

³³ Given the way in which Fanshawe conducted the surveys, the document's contents and later events, the jurors seem to have posed these questions at the second meeting and Fanshawe presented his replies at the third.

³⁴ 'A Friends dus Comendacion', stanza 45: 'But if a Copiholder sell land, out of court by deed / And livery & season thereof give & custome so exceed / Soch lands he flatly forfeytt as also by exchange / Of copyhold for Freehold allthoug it may seeme strange'. (See Appendix 1, 'Anthony Bradshaw's poem'.)

³⁵ Assuming, of course, that he was not just using 'strange' to rhyme with 'exchange'.

³⁶ I am grateful to Professor Richard Smith for discussing this matter with me.

Fanshawe's mission to the northern parts of the duchy was largely unsuccessful and he returned to London on 14 October. However, his replies to the Duffield tenants had clearly borne fruit, for on 30 November, at 'the Dutchye house' in London, a group of them appeared before the king's commissioners and 'desired to bee received to Composition for purchase of their Coppyholde estates in fee Farme together with such rite of Common as they now inioye'.³⁷ But the fruit turned sour: the commissioners stipulated the high rate of fifty years' rent as the purchase price and the tenants were 'not altogether willinge to coom to that rate'. They beat a hasty retreat, claiming that they needed to confer with 'the rest of theyr neighbours in the Cuntry before any Conclusion'. There is no record of any further meetings and indeed subsequent events confirm that in the event they did not purchase their copyholds.

Hoyle shows that, as with the crown's project to fix entry fines, its project to enfranchise copyhold tenants was taken up on very few manors. In general the valuation of the freehold of a property was between forty and fifty years' rent, the Duffield tenants being offered the least favourable rate.³⁸ As at Duffield, most tenants were either unwilling or unable to pay this. Perhaps tenants were happy with the *status quo*, particularly on manors where fines had been respited. Freeholding was not always attractive to tenants. Although, if valued at 40s or more, it bestowed the electoral franchise it also brought other more demanding responsibilities. Indeed, Hoyle has observed that 'the obligations placed on freeholders, notably that of jury service, were not, as a later tradition might have it, the valued freedoms of politically active men but expensive and time-consuming chores'.³⁹ We shall see, however, that

³⁷ DRO: D5195/1/1/1, Fanshawe's footnote to the document, dated 30 November 1611.

³⁸ Hoyle, "Shearing the hog", p. 253.

³⁹ Hoyle, "Shearing the hog", p. 253. On the manor of Whickham, County Durham, copyholders enjoyed many customary privileges and rights as a result of the terms of the Grand Lease of the coal

the next generation of Duffield copyholders *were* keen to enjoy the political benefits of enfranchisement.

Further proof that the crown's attempt in 1611 to enfranchise the Duffield copyholders was unsuccessful comes from interrogatories relating to Sir Edward Leech's conduct both before and after purchasing the manor in 1629.⁴⁰ When negotiating the purchase, Leech, aware of the crown's previous attempts to persuade the tenants to buy the freehold of their property, offered to sell tenants their freeholds in return for their support.⁴¹ The copyholders so approached did not take up his offer, but the fact that he could make it confirms that the crown's earlier project to sell freeholds had failed.⁴² Similarly, the disputes that raged in 1640 between Leech and various tenants at Duffield over customs governing entry fines demonstrate that copyholding was still the principal form of tenure there.⁴³

mines there. The possibility of enfranchisement was never raised by the lord of the manor, the bishop of Durham. (D. Levine and K. Wrightson, *The making of an industrial society: Whickham 1560-1765*, (Oxford, 1991), Section 2, Chapter 3, 'The Copyholders of Whickham and the Lords of Coal', *passim*.)

⁴⁰ For the sale of the manor, see section iii below. When trying to fit together the incomplete jigsaw of past events, it is necessary to use whatever pieces remain, however small. The questions that comprised interrogatories posed to local witnesses may be used as credible sources since they were worded according to a version of those events given by one of the parties concerned. In the Court of Chancery, 'The questions or interrogatories, which were to be put verbally to the witnesses, were written down on parchment and signed by the relevant counsel or solicitor who had framed and drafted them. ... The questions themselves were phrased with cautious formality ... The general range of a set of interrogatories would cover the assertions of the pleadings point by point ...' (W. J. Jones, *The Elizabethan Court of Chancery* (Oxford, 1967), p. 238) The way in which interrogatories were fashioned is clearly visible in the papers relating to the riots at Whittlesey: all of the points raised by the affidavit of John Newton were incorporated in the interrogatories posed to local witnesses. (HLRO: HLMP, bundle dated 26 June 1643, affidavit of John Newton, 24 May 1643; interrogatories to be administered to witnesses, 10 June 1643.)

⁴¹ TNA: PRO: DL4/98/29. As with many depositions, the witnesses simply followed the line of questioning in their answers, it is the interrogatories that imply Leech's strategy. Deponents were asked whether Leech did '... promise unto the said Relators or some others on their behalfe that yf hee Could purchase the same Mannours he would make all of their Copyhould estates freehould? And at what rate did he see promise to make them freehould?'. (TNA: PRO: DL4/98/29, interrogatory number 5 on behalf of the plaintiffs.)

⁴² In 1635 at least one tenant, Henry Mellor, did pay to make certain the fines on his copyhold lands in Makeney and Southwood. A memorandum, dated 25 August 1635, records the payment of £84 for the composition for the uncertainty of his fines by Mellor to Leech. (DRO: D2402 A/PZ 2/1, 'George Bradshaw's book of the customs and liberties of Duffield Frith', f. 42r.)

⁴³ TNA: PRO: DL4/98/29, Thomas Challoner *et al. versus* Sir Edward Leech, 17 February 1641; TNA: PRO: DL4/99/10, Sir Edward Leech *versus* Thomas Challenor *et al.*, 24 July 1641.

In 1631, realising that copyhold fines respited on many manors since 1608 had still not been levied, duchy officials attempted to assess and collect them, a particularly problematic task since some manors had, in fact, been sold in the interim.⁴⁴ Needless to say, the collection of these arrears met with opposition, both tacit and spoken, at Duffield. In March 1633, Thomas Challoner, steward of the manor, proposed a meeting at Duffield for all copyholders 'to treat with them for a composition with his majesty' for their arrears of fines but only about twenty out of over 200 tenants attended. John Stanley, acting as spokesman, 'was audaciously refractorius ... [and] sayd they would be arrested and arrested and arrested agayne before they would submitt to pay any more then the auntient Fines'.⁴⁵ Clearly, rather than simply collecting the respited fines at their former rate, the duchy was attempting to collect increased fines according to Salisbury's original plan.⁴⁶

In July 1634 the duchy issued a commission to compound with the copyhold tenants of Duffield for their arrears of entry fines then due to the crown.⁴⁷ The commissioners returned three copies of a full rental of all tenancies in the manor of Duffield, the value of which was about £134.⁴⁸ They also calculated that the actual

⁴⁴ '[I]t is further ordered that all such Court Rolles wich have beene taken since Anno Septimo Jacobi ... wherin Coppieholders have beene admittted and the Fynes not beene assessed the Court Rolles shalbe delivered unto Mr Auditor Fanshaw untill the Fines be assessed and levied' (TNA: PRO: DL5/31, f. 78r, 29 June 1631). See below for the sale of some of the duchy's manors, including Duffield. (Chapter 4, part 1, section iii, 'The sale of the manor'.)

⁴⁵ TNA: PRO: DL41/876, report of Thomas Challoner, 25 March 1633.

⁴⁶ Upon examination in London, Stanley modified his tone but the tenants still refused to cooperate. (TNA: PRO: DL4/155/43, examination of John Stanley, 16 May 1633.)

⁴⁷ TNA: PRO: DL44/1142, commission dated 23 July 1634.

⁴⁸ TNA: PRO: DL44/1142. There were 264 holdings in total: 39 freehold and 225 customaryhold. Although drawn up in 1634, internal evidence suggests that it describes holdings as they were in 1625. For example, William Stables alias Baker, listed as holding freehold and copyhold land, died in October 1625. (LRO: B/C/11, will and inventory of William Stables alias Baker of Windley, probate granted 20 October 1625.) As the manor had been sold in 1628, the duchy could not produce a rental of its tenants there in 1634. Unfortunately the commissioners did not value the copyholds in the manor of Belper and so these rentals, full though they are, do not record details of every tenancy in the area covered by this study. Although there were 266 tenancies, due to this problem of isonomy, it is impossible to distinguish between tenants who had multiple holdings and tenants with the same name who had one or more holdings.

value of the manor was about £757, an increase of nearly 565 per cent.⁴⁹ Appended to the rentals was a list of eighteen tenants, mostly of the better sort, who had indicated a willingness to pay arrears at the rate of one year's rent, a compromise between the customary rate and the increased rate, but these men comprised less than 10 percent of the copyholders.⁵⁰ No progress was made with the rest of the tenants, so, in June 1635, yet another commission was issued.⁵¹

These commissioners were authorised to collect the arrears at the reduced rate of 'halfe a yeares full valewe for the said Fynes' and to return the names of all who refused to pay their fine.⁵² However, rather than attempt to collect the fines due from the tenants named in the rentals drawn up the previous year, these commissioners listed all 571 holdings for which the fines, totalling about £1,790, had been respited between 1608 and 1627. Since the return is a record of fines due, rather than of fines collected, it is unclear whether the duchy ever recouped any of them. The commissioners were able to collect information but not payments: the tenants were well aware that the crown had previously sold the manor and was no longer their landlord.⁵³ This abortive attempt to collect overdue fines for its former tenants demonstrates that crown policies overlapped but did not necessarily complement each other.

⁴⁹ For details of some other crown manors that were heavily undervalued, see F. C. Dietz, *English Public Finance 1485-1641* (2 volumes, London, 1964), 2, *1558-1641*, pp. 298-99.

⁵⁰ There is no indication why these men might have eventually agreed to pay their respited entry fines. Presumably they expected something in return from the duchy although, as the manor already had been sold and the enclosures agreed, what they hoped for is unclear.

⁵¹ TNA: PRO: DL44/1147, commission dated 23 June 1635. The extant document is in poor condition, only the middle being legible, but the National Archives' catalogue describes it thus: 'Account of the *collection* of copyhold fines within the manor.' In the Derbyshire Record Office there is a book of copyhold fines, 1610-1628, in which the tenants surrendering land and those to whom it was surrendered were named but no figures were entered in the 'Fines' column. (DRO: D2402 A/PZ 5/1, Duffield Fines 1610-1628). The duchy's commissioners may have had access to this book.

⁵² TNA: PRO: DL44/1147, 'A Particular of such Fynes uppon Surrenders within the Mannours there as are due to his Maiestie since the Sixte yeare of his [i.e. James I's] Raigne of England &c according to the rate of halfe a yeares value for every Fine', undated but commission dated 23 June 1635.

⁵³ The sale explains why, in 1635, the commissioners only listed fines due up to 1627.

iii. The sale of the manor

Oblique references in the duchy's archive reveal that the sale of the manor of Duffield was bound up in the commercial dealings concerning the 'Royal Contract Estates'. Although very little work has been done on the disposal of these estates, the background may be summarised as follows.⁵⁴ By 1626 the crown had two large loans, amounting to over £150,000 excluding interest, outstanding to the Corporation of the City of London. Since repayment was beyond the crown's means, negotiations were commenced to satisfy the debt by advancing land to trustees for the corporation. Agreement was reached in December 1627, whereby trustees for the corporation were to receive lands, estimated at twenty-eight years' rent to be worth about £350,000, provided that it advanced a further £120,000 to the crown.⁵⁵ The first-named trustee of the contract was Edward Ditchfield. The corporation's tenure of the manors from the crown would be by 'free and common socage', upon payment of a fixed rent.⁵⁶ The corporation, therefore, effectively 'purchased' the manors in fee-farm.⁵⁷ In order to recoup the money advanced to the crown, the corporation was entitled to sell these manors that comprised what became known as the Royal Contract Estates; they were to be sold under the same terms, that is, in fee farm. Theoretically the crown benefited from the contract twice over because the net result was not only that the crown received the advance from the corporation in return for various manors, but also that the corporation, or those who purchased the

⁵⁴ The following summary is based on R. W. Hoyle, 'Introduction', in Hoyle (ed.), *Estates of the English Crown*, pp. 26-27 and Robert Ashton, *The Crown and the Money Market 1603-1640* (Oxford, 1960), Chapter 6, 'The Corporation of London as a Land contractor (1627-40)', pp. 132-53.

⁵⁵ That is, the purchase price of the land was estimated at the equivalent of 28 years' rent. This was the minimum price at which the contractors then hoped to sell. (Ashton, *Crown and the Money Market*, p. 135)

⁵⁶ Ashton, *Crown and the Money Market*, p. 135. For definition of 'free and common socage', see E. Kerridge, *Agrarian Problems in the Sixteenth Century and After* (London, 1969), pp. 33-34.

⁵⁷ Entries in the Duchy Decree and Order Books relate to numerous Duchy manors purchased by Ditchfield *et al* and the fee farms rents due from them. (For example, see TNA: PRO: DL5/31, ff. 20r, 23r, 78r.)

manors from them, had to pay an annual fixed rent to the crown. This should have put the crown in an advantageous situation for, as Hoyle points out, although such sales ‘prohibited the Crown from taking fines on leases in the future’, it ‘maintained its rental income ... whilst shedding its responsibility for repairs’.⁵⁸

Nowhere are the evidential problems relating to crown policy regarding Duffield more acute than in the matter of the Royal Contract Estates. The sheer bulk of the Contract’s archive is such that the reconstitution of the experiences of a single manor within it is problematic.⁵⁹ The difficulties are compounded by the fact that references to the Contract Estates within the duchy’s own archive are elusive to the point of vagueness. A casual reader of this archive would scarcely notice any connection with the Contract Estates were it not for the identity of the trustees. The historiography of the Contract Estates is underdeveloped. Hoyle has noted that although Ashton has considered the Royal Contract from the financial point of view, the disposal and management of the estates by the City ‘remains entirely unstudied’.⁶⁰ Given the size and complexity of the archive and of the estates themselves, this is perhaps not surprising.

Scattered fragments of evidence in various archives show that Duffield was one of the Royal Contract Estates, which passed to Ditchfield and his associates in September 1628.⁶¹ There are only two documents in the archive of the Contract

⁵⁸ Hoyle, ‘Introduction’, p. 28.

⁵⁹ The archive of the Royal Contract Estates is held at the Corporation of London Record Office. The manors encompassed by the Contract were situated throughout England and Wales, in thirty English counties and eight Welsh. There is no detailed catalogue and no single list of all the manors concerned. In fact, the archive is so large that its custodians have no record of the actual number of documents of which it comprises. However, there are two card indexes to the papers: the first is a subject index covering general headings; the second index is by county.

⁶⁰ Hoyle, ‘Introduction’, p. 26, n. 78.

⁶¹ For example, BL: Add MS 6691, ff. 100-106, is a transcript of an exemplification of letters patent which states that ‘Manors of Duffield, Beaureper, Holebrooke, Southwood, Highedge, Edrichey, Holland and Bigginge &c.’ were granted to the Corporation of London’s trustees in 1628. This document is part of the Woolley family’s manuscripts, which include extensive notes made by William Woolley when compiling his *History of Derbyshire*, which remained unpublished during his lifetime. The manuscripts have been catalogued briefly by J. C. Cox in *DAJ*, 34 & 35 (1912 & 1913).

Estates that relate solely to Duffield, although it is mentioned in passing in others.⁶²

Sir Edward Leech, one of the Masters in Chancery, purchased the manor from the Corporation in 1630 for £3,902 3s 4d; the annual value of the manor to the crown being given as £138.⁶³ Like the duchy before him, Leech tried to wring as much revenue from the manor as possible but the most lucrative asset in the area was outside his grasp for the crown had been careful to exclude the Frith from the Royal Contract Estates. The grants to both Ditchfield *et al.* and Leech clearly defined the lands that comprised the manor of Duffield and its various members, and explicitly excluded from the sale not only the Frith itself but also the proceeds of its wards.⁶⁴

iv. The improvement of the Frith

In 1630, therefore, the crown had reserved Duffield's most *potentially* lucrative asset for itself. Its subsequent improvement of the Frith by disafforestation and enclosure was to prove its most controversial project there.⁶⁵ Large open tracts of underused

⁶² One document is the record of a court baron and view of frankpledge held there on 8 April 1629 on behalf of Ditchfield and his associates, a fruitful source of details of manorial jurors and officials. (CLRO: R.C.E. Papers no. 201, View of Frankpledge, Duffield, 8 April 1629). The second is a counterpart of the grant of the manors of 'Beaureper, Bigging, Duffield, Edrichey, Holland and Southwood' to Sir Edward Leech, 1 March 1630. (CLRO: Deeds RCE 45/9.) A printed guide to the Corporation of London's archive states that the R.C.E. papers include a survey of Duffield. There is no survey as such, the document referred to is the counterpart of Leech's grant. (H. Deadman and E. Scudder, *An Introductory Guide to the Corporation of London Records Office* (London, undated), p. 28.)

⁶³ CLRO: Deeds RCE 45/9. The value given in this document is virtually the same as that in TNA: PRO: DL11/1142. The deed refers to him as 'Edward Leche, knight, one of the Masters of the Court of Chancery'. (CLRO: Deeds RCE 45/9.) Few details of his life have been recorded. He was one of the knights of the shire of Derby in the parliament of 1628 and is mentioned several times in R. C. Johnson *et al.* (eds), *Commons Debates, 1628* (6 volumes, New Haven, 1977-c.1983). He was lord of the manor of Shipley, which was situated about six miles east of Duffield. (For a brief description of Shipley, see Catherine Glover and Philip Riden (eds), *William Woolley's History of Derbyshire* (Derbyshire Record Society, 6, Chesterfield, 1981), p. 71.)

⁶⁴ BL: Add MS 6691, ff. 100-106, grant to Ditchfield *et al.*; CLRO: Deeds RCE 45/9, grant to Edward Leech. For example, the grant to Ditchfield *et al.* stated that they had purchased the manor of Duffield 'except however the liberty and jurisdiction of the Forest or Chase known as Duffield Frith, lying within the limits of the aforesaid manor of Duffield. ... and except all of the lands, tenements, warrens, hereditments etc in the four wards of the forest, namely, Duffield Ward, Beaureper Ward, Holland Ward & Colebrooke alias Holbrooke Ward'.

⁶⁵ For the way in which the crown implemented its policy of improving its forests by disafforestation and enclosure, see R. W. Hoyle, 'Disafforestation and drainage: the Crown as entrepreneur?', in Hoyle (ed.), *Estates of the English Crown*, pp. 353-88. Other studies of the disafforestation and

land such as forests were prime targets for improvement.⁶⁶ As we have already noted, numerous commentators argued that the enclosure of wastes and forests was in the best interests of the poor. Manwood, for example, claimed that such enclosures would provide ‘many dwelling houses for so many desolate people, which now do want places of habitation’.⁶⁷ However, despite such pious hopes, the enclosure of Duffield Frith was viewed by the crown simply as another revenue raising project: royal rhetoric against idle commoners and in favour of the improvement of waste ground is conspicuous by its absence from all the relevant decrees and orders.⁶⁸

By the time of the projected disafforestation and enclosure in 1632, the Frith was virtually worthless to the crown as a source of timber.⁶⁹ Following the felling of trees by Shrewsbury and Jaye, the value of the timber there was minimal. Surveys taken at the time of Jaye’s purchase indicated that there were only sufficient trees ‘remayninge such only as are allowed for the necessary uses of the farmours and lessees’.⁷⁰ Similarly, pannage was negligible because the wards were ‘utterly

enclosure of royal forests include John Broad and Richard Hoyle (eds), *Bernwood: The Life and Afterlife of a Forest* (Lancaster, 1997), especially Chapter 3; L. Merricks, “‘Without violence and by controlling the poorer sort’: the enclosure of Ashdown Forest 1640-1693”, *Sussex Archaeological Collections*, 132 (1994), pp. 115-28; B. Sharp, *In Contempt of All Authority: Rural Artisans And Riot In The West of England, 1586-1660* (London, 1980); R. Somerville, ‘Commons and wastes in north-west Derbyshire – the High Peak ‘new lands’, *DAJ*, 97 (1977), pp. 16-22).

⁶⁶ Hoyle has described the typical process by which disafforestation was brought about. (Hoyle, ‘Disafforestation and drainage’, pp. 369-72.) The process was similar at Duffield except that the decree confirming the Duffield enclosures did not formally announce the abolition of forest rights in the Frith.

⁶⁷ John Manwood, ‘Project for improving the Land Revenue, by inclosing Wasts. For Sir Julius Caesar. 27th April 1609’, published in J. St John, *Observations on the Land Revenue of the Crown* (London, 1787), Appendix I, p. 2. (The appendices are independently paginated.)

⁶⁸ Here is yet another indication that Charles’s agrarian policies were ‘smeared with the trail of finance’. (R. H. Tawney, *The Agrarian Problem in the Sixteenth Century* (London, 1912), p. 391.)

⁶⁹ The annual rent due for ‘commonage’ was negligible and the woodmote court, which had met regularly and levied various fines until the early seventeenth century, was effectively dormant. (For woodmote courts in the 1590s, see *VCH Derbys*, 1, pp. 419-20.) The office of woodward still existed at the time of the enclosure, the then incumbent being Henry Gregson. (TNA: PRO: DL44/1127, documents 2 and 3.)

⁷⁰ TNA: PRO: DL4/79/55, interrogatories and depositions in the case of the earl of Newcastle *versus* Robert Treswell and Thomas Jaye, July 1629.

decayed'.⁷¹ As a source of vast acres of land available for improvement, however, the Frith was a potential goldmine. Although the buoyant land market revealed in various manorial surveys suggests that Duffield's arable fields were fertile, soil in much of the Frith itself was not.⁷² Later deponents stated that occupants of enclosed areas had 'bine at great Costes about improving the sayd Landes by Tilling Manuring Marling or lymeing, wich were heretofore very barren and unprofitable'.⁷³

The process which eventually brought about the disafforestation and enclosure commenced in 1632 with a suit initiated by the duchy of Lancaster against William Cavendish, earl of Newcastle, and others charging them with illegal intrusion in the Frith.⁷⁴ The defendants claimed that their landholding in the area entitled them to common of pasture there.⁷⁵ As a result a commission was issued in July to several high-ranking duchy officers as well as local justices, who were to 'treat, agree and conclude with the Commoners that Clayme right of Commoninge in our forest of Duffield' so that an area might be allocated for enclosure on behalf of

⁷¹ BL: Add MS 6691, f. 84.

⁷² From the various surveys taken following the attempts to collect respited fines, it is possible to estimate the number of land transactions that took place in the manor between 1608 and 1627. However, it is difficult to assess whether this number was 'typical' for that period. Theoretically, comparison could be made with Hoyle and French's findings regarding land transactions in the manor of Slaidburn but, frustratingly, the number of transactions taking place in Slaidburn in the 1620s was skewed because the lord of the manor made numerous grants of small parcels of common during that decade. (H. R. French and R. W. Hoyle, 'The Land Market of a Pennine Manor: Slaidburn, 1650-1780', *Continuity & Change*, 14 (1999), pp. 349-83, especially p. 354.) (Despite its title, the article was based on databases generated from documents dating from 1520 to 1780.)

⁷³ TNA: PRO: E134/1659/East27.

⁷⁴ The only extant document that refers to this suit is TNA: PRO: DL5/31, f. 446r, a decree issued by the duchy court, dated 21 November 1633. The key documents relating to the original suit are missing from the duchy's archive. TNA: PRO: DL1/325 (unnumbered) is the (missing) bill of complaint of the Attorney-General *versus* William, Viscount Mansfield, earl of Newcastle and others (Hilary Term 6 Charles I). (A marginal note in the contemporary index (TNA: PRO: IND 16919) says that this suit refers to Duffield Frith.) TNA: PRO: DL1/328 (unnumbered) is the (missing) answer of William, earl of Newcastle *versus* the Attorney-General (Michaelmas Term 7 Charles I). (A marginal note in TNA: PRO: IND 16919 states 'by information filed Hilary Term 1630'.) Given the recurring problems with the Duffield enclosure – lawsuits were still being brought in the 1660s – it is possible that these earlier papers were produced in one of the later suits and subsequently lost. They are *not* now filed with the later papers.

⁷⁵ The names of the defendants in this suit are given in a document generated in 1642. They were the earl of Newcastle, Sir Gilbert Kniveton, Sir John Brackin, Sir John Harpur, John Curzon esquire, John Gell esquire, Francis Bruckshawe esquire, William Mellor gentleman, William Willett gentleman, Ellis Syms and others. (TNA: PRO: DL1/370 (unnumbered), information presented by Attorney General Beddingfield on relation of Edward Syddenham, 16 May 1642.)

the king.⁷⁶ Each ward would be divided into three, the crown retaining one third, the other two-thirds being granted to the commoners ‘& their Heyres in Fee Farme for ever’.⁷⁷ According to Hoyle, the basis of a decree in the Exchequer or duchy court that formalised a disafforestation and subsequent enclosure was ‘probably (although not certainly) a collusive action initiated by the Attorney-General against the commoners’.⁷⁸ Regarding the Duffield enclosure, however, it is likely that the original suit was *not* collusive but that the earl and his associates were *continuing* their defence of the commoners’ rights in the Frith.⁷⁹ It is probable that Newcastle had been giving assistance to the copyholders there during the 1620s.⁸⁰ Of the named defendants in 1632, only four signed the subsequent enclosure agreements. Presumably if it had been a collusive suit, all of the defendants would have been signatories to the agreements.⁸¹

The commissioners later claimed that they had consulted with ‘diverse of the most substanciall Commoners’, representatives who had ‘for them selves and the rest

⁷⁶ TNA: PRO: DL44/1117, commission dated 12 July 1632. The commissioners appointed were Sir Edward Moseley (Attorney General of the duchy of Lancaster), Sir Henry Agard, Sir William Powell, Sir Richard Harpur, Sir Francis Cooke, Sir Edward Vernon, Edward Ayscough, Francis Munday, Timothy Pusey and Edward Lowe. Those who actually treated with the Duffield commoners were Moseley, Harpur, Agard Cooke and Powell.

⁷⁷ TNA: PRO: DL5/31, f. 447r. The proportion of one-third for the crown and two-thirds for the commoners was the usual allocation at disafforestation and enclosure. (Hoyle, ‘Disafforestation and drainàge’, p. 370.) For a discussion of the physical division of the wards and how the thirds were allocated, see below. (Later in this section.) For a general discussion of enclosure by agreement see Maurice Beresford, ‘Habitation versus Improvement: The Debate on Enclosure by Agreement’, in F. J. Fisher (ed.), *Essays in the Economic and Social History of Tudor and Stuart England in Honour of R. H. Tawney* (Cambridge, 1961), pp. 40-69.

⁷⁸ Hoyle, ‘Disafforestation and drainage: the Crown as entrepreneur?’, p. 371.

⁷⁹ For collusive suits, see Kerridge, *Agrarian Problems*, Chapter 5, ‘Ratification of Enclosures’.

⁸⁰ TNA: PRO: DL1/410, Sir Thomas Ingram, chancellor of the duchy *versus* William, duke of Newcastle *et al*, 8 May 1665. This document provides information about events during the preceding forty-five years in the dispute over common rights in the Frith. Ingram referred to the suit concluded in 1620 regarding, amongst many other matters, use of the Frith by the copyholders of the manor of Ireton Wood and the confirmation of their entry fines. (DL5/28, ff. 368v-79v.) Newcastle was not a named defendant in this earlier suit.

⁸¹ The four who had signed one or more of the three enclosure agreements were John Curzon, John Gell, Francis Bruckshaw and William Willett. The first two were absentee tenants with major estates nearby. (TNA: PRO: DL44/1117, Duffield enclosure agreements, returned to the Duchy Court on 8 August 1632.)

within their severall Wardes' signed three agreements, one for each ward.⁸² Given later events, it is clear that there were misunderstandings, wilful or otherwise, on both sides. These 'representatives' did not have the consent of the remainder of the commoners. In 1650 it was alleged that only 'about one & thirtye Persons in number did agree to itt Butt the other Commoners being in number foure hundred Persons and uppwards did not'.⁸³ This allegation is confirmed by extant drafts of agreements drawn up by the commoners that outline their conditional acceptance of the enclosures: they were signed by only thirty-four men.⁸⁴ The suggestion that opponents of the enclosure numbered about 400 is also entirely credible. Firstly, the petition drawn up in the 1580s, cited above, was presented by over 500 commoners.⁸⁵ Secondly, the rentals drawn up in 1634 show that there were some 266 commonable holdings in the manor of Duffield alone (excluding those in Belper) as well as 'ancient cottagers' who claimed use-rights in the Frith.⁸⁶ Added to this were the tenants of neighbouring manors who intercommoned there.⁸⁷

⁸² That Newcastle was not one of those who met the commissioners and signed the enclosure agreements again suggests that his support for the commoners was genuine, even if difficult to explain. His exact role in the events at Duffield is unclear. It has not been possible to ascertain his motives, partly because, as already noted, the key documents for his participation are missing from the duchy's archive. He was a legal commoner in the Frith, being the tenant of Mansell Park and of various small properties in Windley, Duffield and Mugginton. His landed interest in Duffield is not mentioned in any of the duchy's papers consulted for this study; only the archive of the Committee for Compounding reveals his property in area, as opposed to his connection as Shrewsbury's heir. (M. A. Everett Green (ed.), *Calendar of the Proceedings of the Committee for Compounding etc, 1643-1660* (5 volumes, London, 1889-92), 3, *Cases, 1647-June 1650*, p. 1735.)

⁸³ TNA: PRO: DL32/4 and TNA: PRO: E317/Derb/18 are two copies of Commonwealth surveyors' reports of their visit to Duffield made in 1650.

⁸⁴ Original drafts, with many alterations, and the final text of three agreements, one from each ward, survive in TNA: PRO: DL44/1117. It must be emphasised that the terms of these three agreements were those set out by the (leading) commoners themselves; they were not the duchy's terms. In fact, many of the stipulations made by the commoners were NOT included in the final 'agreement' that was issued. The latter is recorded in full in TNA: PRO: DL5/31, ff. 446r-47v. Of the thirty-four men, seven offered to compound for their respited fines in 1634. (TNA: PRO: DL44/1142, document 2.)

⁸⁵ TNA: PRO: DL44/305, f. 5, 2 September 1587.

⁸⁶ TNA: PRO: DL44/1142.

⁸⁷ The tenants of the manors that intercommoned in the Frith came from thirteen townships or scattered settlements of varying size. Belper, Biggin, Duffield, Hazelwood, Heage, Hulland, Idrichay, Makeney, Turnditch and Windley comprised the large manor of Duffield *cum membris*; Ireton Wood, Mercaston and Mugginton comprised, or belonged to, other manors. (TNA: PRO: DL1/370 (unnumbered), answer of Robert Mellor *et al.*, 26 May 1642.) For detailed descriptions of the various

What might tempt the signatories to consent to the desecration of their commons, and by extension of their customs, by enclosure? Although three of them were neighbouring gentry whose manors intercommoned in the Frith, the remainder comprised the better sort of Duffield, a community deeply entrenched in custom; two were even sons of Anthony Bradshaw.⁸⁸ The men justified their actions in terms of overcharging, asking the commissioners to examine the title of all who claimed common in the Frith so that those who had no legal rights could be barred. At a time when the local population was growing and the area of the Frith available to commoners was about to shrink by one-third, they feared that those entitled to access would be squeezed out.⁸⁹ The decree confirming the enclosure acknowledged the commoners' request, stating that a commission would be issued. Even so, the method by which those not entitled to common might be either defined or identified or, more to the point, physically debarred, was not specified.⁹⁰ Policing common rights over such a large area would have been virtually impossible.

It is also likely that some of the signatories had been coerced. In 1659 it was alleged that Henry Gregson, woodward of the Frith, had 'used Threates or persuasions to gaine Consent of men to subscribe propositions' concerning the enclosure.⁹¹ Others claimed that their consent had been conditional and that the conditions had never been performed.⁹² A study of various enclosures by

settlements, see Mary Wiltshire *et al.*, *Duffield Frith: History & Evolution of the Landscape of a Medieval Derbyshire Forest* (Ashbourne, 2005), Chapter 7, 'Life in the Frith'.

⁸⁸ The neighbouring gentry were John Curzon, John Gell and William Stanhope. Joseph and Vicesimus Bradshaw both signed the agreement for Chevin ward. Their father had died in 1614. (LRO: B/C/11, will of Anthony Bradshaw, gentleman, of Duffield, probate granted 3 May 1614.)

⁸⁹ The demography of Duffield has already been discussed: the population was increasing. Not only were baptisms exceeding burials but also incomers were squatting in the Frith.

⁹⁰ There is no record of any such commission. If there were it would have been used extensively in this thesis for it would have described individuals' landholdings and the rights attached to them.

⁹¹ TNA: PRO: E134/1659/East27, interrogatory number 5 for the defendants. Henry Gregson, 'woodward of his Maiesties woods upon Belper Cheven and Holland wardes', was lessee of the thirty-two-acre warren in Hulland ward and held extensive copyhold land in Windley and Turnditch. (TNA: PRO: DL44/1127, document 3; TNA: PRO: DL5/31, f. 447r, TNA: PRO: DL44/1147.)

⁹² TNA: PRO: DL5/35, f. 71v.

‘agreement’ has, indeed, revealed that many such agreements were in fact obtained only following coercion or the misrepresentation of the projected outcome.⁹³ Conditions written into the agreements that were signed by these Duffield commoners were not actually implemented by the duchy: the enclosures that these men ‘agreed to’ were *not* those that were erected.

The planned physical divisions of the three wards are clearly described in various records of the enclosure: the commoners were allocated 1,122 acres in Belper Ward; 814 acres in Chevin; and 1,129 acres in Hulland, and approximately another 100 acres in each ward to allow for trackways. In total, some 3,065 acres, excluding trackways.⁹⁴ The ‘agreement’ was recorded in the duchy court’s order book as the decree resolving the on-going suit between the Attorney-General, on behalf of the king, and the earl of Newcastle and the commoners. The commoners were to hold the lands in free and common socage for annual rents of 2s for Hulland ward, 2s for Chevin ward and 38s for Belper ward and their three two-thirds parts were granted on their behalf to trustees.⁹⁵ The king granted his third of each ward in fee-farm to

⁹³ See Beresford, ‘Habitation versus Improvement’, *passim*. The mechanics involved in trying to bring about one particular enclosure by agreement are clearly set out in Steve Hindle, ‘Persuasion and Protest in the Caddington Common Enclosure Dispute, 1635-39’, *Past & Present*, 158 (February 1998), pp. 37-78.

⁹⁴ The grant of the enclosure is recorded in Latin in TNA: PRO: DL42/24, pp. 38-40 and in English in TNA: PRO: DL5/31, ff. 446r-47v. The locations of the third parts of each ward allotted to the king and the two-third parts allotted to the commoners are precisely described. Copies of the grant are recorded in BL Add MS 6691, ff. 77-85 and in TNA: PRO: E317/Derb/18. The measurements of the ‘thirds’ (some were larger than others to allow for the quality of the soil) are given in TNA: PRO: DL44/1127, report of the commissioners, dated 20 September 1633. This contains a description of the map drawn up by the surveyor, William Jordan, who delineated the various thirds with different colours. Unfortunately, a search of the National Archives’ catalogue of extant duchy of Lancaster maps has failed to locate this map. A conjectural map of the boundaries of each ward has recently been published in Wiltshire *et al*, *Duffield Frith*, p. 157. That map has been reproduced here, with permission, as Map 2:1.

⁹⁵ The various documents differ over the value of the rents to be paid and no reason is given for higher rent for Belper Ward but TNA: PRO: DL5/31, f. 447r suggests that it may have been related to the rate of ‘ward-silver’ paid to the duchy during Elizabeth’s reign. Only the Commonwealth survey of 1650 (TNA: PRO: E317/Derb/18) mentions rent ‘per acre’, all of the other documents refer to rent ‘per annum’. The trustees were John Osborne, Edward Smith, Roger Allestrey, Isaac Smith, William Woolley and John Wright.

Edward Syddenham, esquire, at a cost of £2,195 7s 6d and an annual rent of 40s.⁹⁶ But, as Charles already owed him £1,925, Syddenham's payment was reimbursed. Thus the crown raised no capital at all by the disafforestation and enclosure. It merely repaid a debt, although, as with the sale of the Royal Contract Estates, it did receive a (meagre) rental income. Even so, the crown had substantial cause to regret the method selected to repay this particular debt because the enclosure, riding roughshod through local custom, proved very expensive to enforce and maintain.

The dismal outcomes of each royal project to which Duffield was subjected suggest that the crown should have avoided attacking a community so entrenched in custom. Inhabitants used their armoury of custom to fend off, or at least deflect, various schemes aimed at destroying their established way of life and, by extension, their livelihoods. In theory the only project that failed completely was the enfranchisement of the copyholders: the crown received some revenue from the sale of woods and it retained small rental incomes from both the manor and the enclosed Frith. In practice, however, the inhabitants were largely triumphant. By the 1630s the crown's timber resources were virtually depleted, although some woodland remained which could be exploited according to custom; and despite numerous attempts, respited fines were not collected. The disafforestation and the lease of the subsequent enclosures enabled the crown to pay off a substantial debt but the enclosures themselves caused uproar in the neighbourhood, uproar that challenged the crown's authority and demanded heavy expenditure in terms of lawsuits. And it is to these events that we now turn.

⁹⁶ TNA: PRO: DL12/31/86, 31 August 1634. For Syddenham's identity, see below. (Chapter 4, part 2, section x, '1647: Edward Syddenham, a beleaguered landlord'.)

Part 2: The commoners' reactions to the Duffield enclosures

As we have already seen, in the commission to enclose the three wards of Duffield Frith, Charles I made no statement of the advantages that would accrue to commoners or commonwealth. He emphasised, instead, the strictly fiscal nature of this project: the Frith was to be 'inclosed and improved for our use and benefitt'.⁹⁷ Little wonder, then, that local responses were unfavourable, surfacing before the enclosures were even ratified, and rolling on for more than thirty years.

Until recently, riot was virtually the only form of popular protest and, by extension, popular politics, studied by historians. This is partly, one suspects, because outbreaks of violence are relatively easy to locate in various legal archives, in particular those of central government.⁹⁸ John Walter has labelled such work 'stepping stone' history, leaping as it does from one moment of protest to the next, thereby suggesting that popular politics is 'spasmodic and reactive'.⁹⁹ He has argued that although communities may have seemed quiet, they were not necessarily quiescent: popular attitudes were frequently critical of the authorities but only rarely audible. Chiming with this, Wayne Te Brake has described 'expressive actions' such as riots 'as statements within an on-going conversation'.¹⁰⁰ This is a conversation that historians have recently begun to eavesdrop by considering other 'weapons of the weak' that were open to protesters. Drawing largely, but not exclusively, on the work of the anthropologist James C. Scott, various strategies of passive resistance

⁹⁷ TNA: PRO: DL44/1117, document 1, commission dated 12 July 1632.

⁹⁸ See, for example, K. Lindley, *Fenland Riots and the English Revolution* (London, 1982); Roger B. Manning, *Village Revolts: Social Protest and Popular Disturbances in England 1509-1640* (Oxford, 1988); Sharp, *In Contempt of All Authority*.

⁹⁹ John Walter, 'Public transcripts, popular agency and the politics of subsistence in early modern England', in Michael J. Braddick and John Walter (eds), *Negotiating Power in Early Modern Society: Order Hierarchy and Subordination in Britain and Ireland* (Cambridge, 2001), pp. 146-47.

¹⁰⁰ Wayne Te Brake, *Shaping History: Ordinary People in European Politics, 1500-1700* (Berkeley, 1998), p. 11. This comment is made in the context of a discussion of the political significance of such activities. The political nature of riot has been discussed at length in Chapter 1, section v, 'Politics'.

have been identified, including grumbling, foot-dragging and harassment.¹⁰¹ The very subtlety of such protests has, however, rendered their detection, by both contemporaries and historians, problematic. Whilst historians may suspect that such activities occurred, since their perpetrators were rarely traced, let alone prosecuted, these forms of resistance are more difficult to recover. The following analysis employs fragmentary evidence to reconstruct the wide range of expressions of opposition that were employed against the enclosures at Duffield, seeking to distinguish various phases of protest, and drawing attention, in particular, to the pre-emptive and passive character of the resistance during the 1630s. As we shall see, riots were by no means the only statements made during the political conversation between the authorities and the Duffield commoners, a conversation that sometimes thundered, sometimes whispered, but rarely lapsed into silence.

i. 1633: Commoners and enclosure boundaries

In March 1633, having procured agreements from the leading commoners of the three wards, the duchy issued a commission to define the boundaries of the enclosure in each ward.¹⁰² Assisted by a surveyor, the commissioners were to divide the wards into three equal parts, taking account of the soil quality, and to mark the divisions on the ground with holes, stakes or stones. They were to report anyone engaged in ‘fillinge upp of holes, removinge of stakes stones or other markes’ that had been

¹⁰¹ James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (Yale, 1990), *passim*. The most detailed discussion of resistance strategies that stopped short of riot is to be found in Walter, ‘Public transcripts’. See also, Andy Wood, *Riot, Rebellion and Popular Politics in Early Modern England* (Basingstoke, 2002), *passim*, but especially p. 89: ‘There was a politics to semi-public verbal dissent, muffled grumbling and anonymous threat as much as there was to open protest’. For a criticism of the use of Scott’s work by early modern historians, see Chris Marsh, ‘Order and Place in England, 1580-1640: The View from the Pew’, *Journal of British Studies*, 44 (2005), pp. 3-26.

¹⁰² The following account is taken from TNA: PRO: DL44/1127. The commission is document 1, 27 March 1633. The named commissioners were nearly all the same as those named in the original enclosure commission of 1632 (TNA: PRO: DL44/1117, document 1, 12 July 1632), but in 1633 those who actually implemented the commission were the two local men, Timothy Pusey and Thomas Gilbert.

fixed by the surveyor. Perhaps the duchy had encountered this form of resistance to enclosure elsewhere: the explicit instructions certainly imply painful past experience.¹⁰³ The nightmare was to recur at Duffield.

In September 1633 the commissioners reported that they and several commoners had met the surveyor, William Jordan, in the Frith. During these meetings the divisions within the wards were agreed upon and Jordan, with ‘the consent of many of the best sorte of the Commoners’, set them out.¹⁰⁴ The names of these commoners are not recorded but it is likely they had been signatories to the enclosure agreements. Forest courts at Duffield had fallen into abeyance by this time and these *ad hoc* meetings occurred instead of a formal court of survey.¹⁰⁵ Again, these few men were allegedly speaking on behalf of literally hundreds of other commoners who claimed rights in the Frith, setting the two groups on a collision course.

The surviving documents provide an account of the manner in which an early modern surveyor marked out a forest enclosure. Such work differed in character from estate surveying.¹⁰⁶ The latter comprised measuring on the ground, and

¹⁰³ No other references to removing markers that defined an enclosure on the ground have been found, either in primary sources or in studies of opposition to enclosure; however, that it was mentioned in the duchy commission does suggest that it had occurred elsewhere. When surveying manors and drawing up maps, surveyors frequently encountered opposition from tenants who did not want ‘the quantities [of their land] to be knowne by measuringe’. (J. H. Bettey, ‘Agriculture and Rural Society in Dorset, 1570-1670 (unpublished PhD thesis, University of Bristol, 1976), p. 141, quoted in A. McRae, *God Speed the Plough: The Representation of Agrarian England, 1500-1660* (Cambridge, 1996), p. 186.)

¹⁰⁴ Jordan drew ‘plots’ of the divisions but these are no longer in the Duchy archive; however a written description of the land allotted to the king and the commoners is set out in the Duchy’s decree concerning the enclosures. (TNA: PRO: DL5/31, ff. 446r-47f, Michaelmas Term 1633) This entry is undated but TNA: PRO: DL5/31, f. 567v dates the decree to 21 November 1633.

¹⁰⁵ For forest courts held in the 1590s, see *VCH Derbys*, 1, pp. 419-20.

¹⁰⁶ In *The Surveiors Dialogue*, John Norden describes, amongst other things, all of the processes that comprised surveying a manor, from holding a court of survey, through measuring the various landholdings on the ground, to plotting them on a map. (John Norden, *The Surveiors Dialogue*, (London, 1607, and later editions). Various aspects of the work of estate surveyors are discussed in McRae, *God Speed the Plough*, Chapter 6: “‘To know one’s own’: the discourse of the estate surveyor”; Bernhard Klein, *Maps and the Writing of Space in Early Modern England and Ireland* (Basingstoke, 2001), Chapter 2: ‘Land measuring: an upstart art’; Richard Helgerson, *Forms of*

delineating on parchment, existing 'boundaries', some of which were already marked by 'meere stones', hedges and ditches. In contrast, laying out an enclosure, particularly one in a forest, involved marking out new territory.¹⁰⁷ The advent of mathematical surveying dramatically reduced the role played by local knowledge in the recording of boundaries. The earlier supremacy of oral tradition was swept away by the surveyor's theodolite and notebook.¹⁰⁸ Memory was superseded by writing and drawing.¹⁰⁹ In general, when an estate was surveyed the tenants who comprised the jury had a legitimate role to play in the construction of the surveyor's plans and, by incremental victories, they might be able to promote their own interests over those of the landlord who had commissioned the survey.¹¹⁰ In contrast, when the forest enclosure at Duffield was set out the majority of the tenants whose access to common rights was being threatened could make no legitimate impact on the surveyor's work.

Jordan surveyed the land and then transferred the measurements thus obtained on to a 'plotte' that he had drawn of the Frith.¹¹¹ Normally the surveyor

Nationhood: The Elizabethan Writing of England (Chicago & London, 1992), Chapter 3: 'The land speaks'.

¹⁰⁷ In his discourse on surveying and woodland management, Rock Church discusses the pros and cons of forest enclosures, but not, frustratingly, the actual mechanics of surveying and enclosing. (R. C., *An olde thrift*, Part 2: 'The commodities and discommodities of inclosing decayed forrests, commons and waste grounds'.)

¹⁰⁸ Norden observed that maps were visual tools 'which tenants mislike, not that the thing it selfe [the map] offendeth them, but that by it they are often prevented or discovered of deceitfull purposes'. The lack of proper maps had been the cause of 'infinite concealements' and 'many intrusions and incrochments'. (Norden, *Surveiors Dialogue* (1607), p. 16, quoted in Klein, *Maps and the writing of space*, p. 57.) For a biography of Norden, see Frank Kitchen, 'Norden, John (c.1547-1625)', *ODNB*.

¹⁰⁹ Klein, *Maps and the Writing of Space*, p. 46. 'The rise of new-style surveyors is indicative of a process that removed land from its location in popular memory and upset the tradition of a limited localized setting, ... where "the day's journey and the morning's ploughing" were conventional units of measurement.'

¹¹⁰ For the input of tenants in estate surveys, see Klein, *Maps and the Writing of Space*, p. 57. In 1609 Norden complained to Salisbury about problems caused by jurors in courts of survey: on one manor certain miscreants had threatened witnesses; elsewhere even though (or because) they had been given six days notice of a manor court, only thirty tenants out of one hundred had attended. (Frank Kitchen, 'John Norden (c.1547-1625): Estate Surveyor, Topographer, County Mapmaker and Devotional Writer', *Imago Mundi*, 49 (1997), p. 53, referring to HMC, *Salisbury MSS*, 21, pp. 53-54, 224, 249.)

¹¹¹ The divisions of each ward were delineated by different colours and there was an accompanying key in the form of a chart. Both the plan and chart were submitted to the duchy court but have not

would simply make holes in the ground to show where the fences, hedges or ditches marking the enclosure should subsequently be placed. Initially this is what Jordan did, with the assistance of two men, father and son, both named John Lane. However, their efforts were sabotaged and the commissioners then instructed Jordan to ‘sett stakes or stones ... where he had made holes in the earthe ... because the holes by troublesome people were filled upp’.¹¹² The additional work of setting stones or stakes in the holes, which needed re-digging, not only meant that Jordan needed to employ labourers to complete the task but also that it took much longer than anticipated. Two competing narratives of the subsequent events survive: firstly, written information submitted to the duchy by John Lane the younger; and secondly, depositions made in the Duchy Chamber at Westminster by the perpetrators.¹¹³

On 18 September 1633, overseen by the Lanes, Francis Johnston and William Underwood were employed in Hulland ward making stakes and driving them into the holes. During the morning, Richard Taylor, a commoner in that ward, asked the workmen to halt their work but they ignored his request. He later returned, accompanied by William and Thomas Webster, two of them armed with bills and one with a pitchfork. Again the workmen were asked to stop and were threatened and reviled as ‘sorie beggarlie fellowes’. This shaming insult emphasised Johnston and Underwood’s position as hirelings, working to the detriment of themselves and their neighbours. Lane senior intervened and the troublemakers left. Later, as he was supervising the insertion of some stakes, four women verbally abused him and the workmen, and also removed all the markers that had been set out. The women

survived. The commissioners copied the measurements in the chart into their papers. (TNA: PRO: DL44/1127, document 2, report by Timothy Pusey and Thomas Gilbert, 20 September 1633.)

¹¹² TNA: PRO: DL44/1127, document 4, statement by John Lane the younger of Hulland, delivered to the commissioners on 20 September 1633 concerning events that occurred on 18 September 1633.

¹¹³ TNA: PRO: DL44/1127, document 4; TNA: PRO: DL4/85/64, ‘Taylor *et al.* Examined uppon a Contempt in Duffield Frith’, November 1633. For the concept of competing narratives, see David Cressy, *Travesties and Transgressions in Tudor and Stuart England* (Oxford, 2000), p. 281.

were later identified as Joan Osbeston, Ellen and Grace Webster, and Alice Taylor, the wives of the three earlier protesters.¹¹⁴ No men acted with them but Thomas Webster was apparently ‘standing afar of reedy to asist them’.¹¹⁵ Later that day a further confrontation occurred between the Taylors and the workmen, who had begun resetting the stakes.¹¹⁶ Husband and wife, armed with a bill and stones respectively, menaced Lane junior and the workmen, again slandering the latter. Taylor, his wife and the other three women spent most of the following day watching Johnston and Underwood working. Alice Taylor apparently insulted them but no physical abuse was offered.

At this point, it is worth considering exactly what was happening here. The women were *not* the original ‘troublesome people’ who had disrupted Jordan’s work. They were not simply filling in holes but were removing stones and stakes that had been set up following the commissioners’ advice to Jordan. Clearly their actions were part of an on-going process of pre-emptive resistance. Resistance that was offered *before* the enclosure agreements were ratified and fences erected, resistance that aimed to obscure the very delineation of those enclosures and so prevent authority being inscribed in the landscape.¹¹⁷

The very next day, 20 September, John Lane’s account of the various encounters was delivered to the commissioners, who in turn submitted it to the duchy

¹¹⁴ Grace Webster was the wife of Thomas; Joan Osbeston’s husband, Robert, was a tailor.

¹¹⁵ For women acting independently to dismantle enclosures, see Martyn Bennett, ‘“And these without number”: Riot and rough grazing; Shepshed, Leicestershire 1604’ (unpublished paper, undated). At Shepshed, when men and women did act together, the protesters worked in pairs so that they could not be accused of riot. (Based on TNA: PRO: STAC8/219/23.) I am grateful to Dr Bennett for resurrecting this paper for me. For collective female action, see R. A. Houlbrooke, ‘Women’s social life and common action in England from the fifteenth century to the eve of the civil war’, *Continuity & Change*, 1 (1986), pp. 171-89. During the Caddington Common dispute, Elizabeth Birchmore and Alice Gazeley together with many unnamed women entered the newly-made enclosures. (Hindle, ‘Persuasion and Protest’, p. 57.)

¹¹⁶ On this occasion, the Taylors were accompanied by their son, Edward.

¹¹⁷ Johnson had set the markers out so that he could draw the map of the divisions. Only after the map had been submitted to the duchy court could the decree ratifying the enclosures be issued as the decree contained the details of the divisions. The implications of the fact that it was women who were removing up the markers will be discussed below.

court. The incidents recounted in Lane's statement so outraged duchy officials that just two months later, Richard Taylor and William and Thomas Webster were forced to appear at Westminster to answer for their actions.¹¹⁸ The authorities construed the actions against the surveyor and his assistants as direct opposition to the king since he had commissioned the enclosures.¹¹⁹ However, rather than being cowed into submission, the Duffield commoners proved wily and evasive in their answers, demonstrating a wide knowledge of the workings of the law and a determination to repulse this attack on their rights.¹²⁰

Taylor claimed that the incidents had occurred because Jordan had set out unequal 'thirds' in Hulland ward.¹²¹ The commoners had therefore requested a meeting with the commissioners and had asked the workmen to stop until after this meeting. Jordan had indeed made unequal divisions but this was because he had taken account of variations in soil quality, as the commoners had stipulated in the draft enclosure agreements.¹²² Taylor further argued that, as the workmen had been unable to produce evidence of their authority to set the stakes, he had as much authority to pull them down.¹²³ With a final flourish, he denied that neither he nor any of his *male* associates had abused or threatened the workmen. He identified

¹¹⁸ TNA: PRO: DL4/85/64, Taylor *et al.*.

¹¹⁹ TNA: PRO: DL4/85/64, interrogatory 8.

¹²⁰ Many historians of early modern England have observed the growing participation in, and knowledge of, the law within all levels of society. See, for example, C. W. Brooks, *Pettyfoggers and Vipers of the Commonwealth: the 'Lower Branch' of the Legal Profession in Early Modern England* (Cambridge, 1986); J. A. Sharpe, 'The people and the law', in B. Reay (ed.), *Popular Culture in Seventeenth-Century England* (London, 1985), pp. 244-70. Popular legalism is a recurrent theme in Wood, *Riot, Rebellion and Popular Politics* and *idem*, *The Politics of Social Conflict: The Peak Country 1520-1770* (Cambridge, 1999). Steve Hindle has described the penetration of litigation and 'law-mindedness' all the way down the social scale. (Steve Hindle, *The State and Social Change in Early Modern England, c.1550-1640* (Basingstoke, 2000), pp. 87-93.) For a discussion of the ways in which the legal system could be manipulated by litigants, see S. Hipkin, '“Sitting on his Penny Rent”: Conflict and Right of Common in Faversham Blean, 1595-1610', *Rural History* 11 (2000), pp. 25-27.

¹²¹ Taylor believed that the ward contained 1200 acres and that therefore 400 acres should have been set out for the king, whereas Jordan had told him that he had laid out 490 acres for the king. It is not clear from whence Taylor obtained his figures. Jordan's measurements for Hulland ward were: total area 1619 acres; three divisions of 604, 525, and 490 acres. (TNA: PRO: DL44/1127, document 2.)

¹²² TNA: PRO: DL44/1117, documents 4, 6 and 8.

¹²³ TNA: PRO: DL4/85/64, examination of Richard Taylor, 29 November 1633.

several women who had pulled up the stakes set by the workmen but denied that he, or anyone else, had procured or encouraged their actions.¹²⁴ William Webster's testimony confirmed that of Taylor.¹²⁵ Regarding the women, he professed ignorance of either their actions or words, distancing himself from their activities. Thomas Webster claimed that he had acted in a 'neighbourlie and freindlie manner' towards the workmen.¹²⁶ He also knew nothing of the women's presence in the ward 'till hee mett with them by Chaunce' and emphasised that they had acted independently of their menfolk.

The implication is that Duffield inhabitants knew that there was a blind spot in the law regarding women.¹²⁷ The defendants claimed that Alice Taylor and her associates acted entirely on their own initiative, without any prompting from their husbands.¹²⁸ The truth of such claims is, however, notoriously difficult to gauge. On the one hand, the women themselves might have decided to act as they did; on the other, considering the weight of the law that would bear down on the men if they admitted instigating the destruction, it is likely that they would have blamed the women. Even though Thomas Webster had been spotted in the background, he

¹²⁴ There is no way of knowing either the name *or* the sex of the instigator.

¹²⁵ TNA: PRO: DL4/85/64, examination of William Webster, 29 November 1633

¹²⁶ TNA: PRO: DL4/85/64, examination of Thomas Webster, 29 November 1633. Keith Wrightson had recently re-examined the concept of 'neighbourliness' and its supposed decline in the early modern period. (Keith Wrightson, 'Mutualities and obligations: changing social relationships in early modern England', Raleigh Lecture, British Academy, 22 November 2005. I am grateful to Professor Wrightson for providing me with a copy of this paper.)

¹²⁷ For women and the law, see Bernard Capp, 'Separate Domains? Women and Authority in Early Modern England', in P. Griffiths, A. Fox and S. Hindle (eds), *The Experience of Authority in Early Modern England* (Basingstoke, 1996), pp. 117-45, especially pp. 121-22 for the 'ambiguous position of women in the eyes of the law and the magistrate'. Many examples of female participation in riots are provided in Houlbrooke, 'Women's social life and common action'. Lindley has drawn attention to the participation of women in a significant proportion of fenland riots. He suggests that this 'may have owed something to an awareness that a relatively lenient attitude was adopted by legal authorities to their sex, as well as a belief in some circles that women and children under the age of discretion were immune from punishment for riot if they acted without male instigation or direction'. (Lindley, *Fenland Riots*, p. 254.) See also C. Z. Wiener, 'Sex roles and crime in late Elizabethan Hertfordshire', *Journal of Social History*, 8 (1975), pp. 38-60.

¹²⁸ In his discussion of the role of early modern women in protests and riots, Houlbrooke has suggested that female rioters were not necessarily acting on the prompting of their menfolk but that they may well have been acting on their own initiative. (Houlbrooke, 'Women's social life and common action', *passim* but especially pp.181-86.)

denied offering them any encouragement.¹²⁹ The strategies employed by these men and women demonstrate an awareness of the limitations of the law. The men did not explicitly voice opposition to the enclosure *per se* but to the amount of land allotted. Unsurprisingly, they were keen to deny any heated verbal exchanges with the crown's agents and their workmen, let alone any physical violence; however, rather than deny that any illegal acts had taken place, they denied the involvement of any legally responsible persons. They were almost certainly testing the water to see how far the crown was prepared to pursue the matter.¹³⁰ The campaign to remove the stones and posts marking out the various thirds could not succeed indefinitely for the boundaries were already recorded on Jordan's 'plotte'; nevertheless the erection of the actual fences encountered passive resistance and, as we shall see, at least one ward was not fenced satisfactorily for several years.

ii. 1633-1637: Commoners and fencing costs

On 21 November 1633, a week before the examinations of Taylor *et al.*, the duchy court issued a decree, based on Jordan's plan, describing the areas in each ward to be allocated to the king and the commoners.¹³¹ Both parties subsequently claimed that the other had received the better land.¹³² Although the enclosure agreements had requested that the thirds be allocated indifferently by the casting of lots once the wards had been measured, the commoners subsequently objected that their land was inferior because 'the Kings Commissioners tooke what Parte they liked best, without

¹²⁹ Interestingly even John Lane assumed that Webster was simply there to provide assistance if necessary rather than actually directing them.

¹³⁰ The outcome of this suit is not known. As a search of the Duchy Order and Decree Book covering 1631-1634 has proved fruitless, it is possible that it was dropped. (TNA: PRO: DL5/31.)

¹³¹ TNA: PRO: DL5/31, ff. 446r-47v.

¹³² TNA: PRO: E134/1659/East27, various depositions on behalf of both the plaintiffs and defendants, March 1659. It has already been demonstrated that the 'thirds' were of unequal acreage due to variations in the quality and nature of the land and that the crown had procured the three best 'thirds'.

casting of Lotts for the same'.¹³³ Alternatively, the crown claimed that, in order to provide better pasture in the two-thirds allotted to the commoners, the duchy had had many trees felled and also had caused the warren in Hulland ward to be destroyed.¹³⁴ The land allotted to the king, moreover, was so barren that in order to render it 'usefull for Tillage & husbandry', his tenant and subtenants had spent much money on trenching, draining, liming and manuring.¹³⁵

The duchy council ordered that the fencing demarcating the king's third within each ward should be erected before Lady Day 1634. Depending on the nature of the soil, whether fertile or barren and rocky, the divisions were marked variously by ditches, quicksets, stone walls, rails and stoops.¹³⁶ The costs of fencing the divisions were to be borne by the king and commoners in proportion to their allocation, that is, the king one third and the commoners two thirds.¹³⁷ The rate at which the physical divisions were created, whether by fence, hedge or ditch, varied in the three wards: the commoners in Chevin ward proved to be the most compliant and those in Hulland the least.

¹³³ TNA: PRO: DL32/4, which is the same as TNA: PRO: E317/Derb/18. Kerridge has stated that casting lots for enclosed portions of land was normal practice, citing several instances to substantiate this. However, on checking his footnotes, they actually refer to the 'allocation' of land rather than the 'casting of lots' for it. (Kerridge, *Agrarian Problems*, p. 106.) Nevertheless, the commoners' request suggests that the practice was not uncommon. In 1642, Robert Mellor claimed that 'there was choise made as for the Kinges Maiestie of the best ground in quality & goodness & of a greater proportion then was ever intended'. (TNA: PRO: DL1/370, answer of Robert Mellor, George Sellars, William Bludworth, John Storer and Thomas Milnes to the information presented by the Attorney General by the relation of Edward Syddenham, esquire, 26 May 1642.)

¹³⁴ TNA: PRO: E134/1659/East27, interrogatory number 4 on behalf of the plaintiffs. For the destruction of warrens, symbols of aristocratic power, by sixteenth-century enclosure rioters, see Amanda Jones, "'Commotion Time': The English Risings of 1549" (unpublished University of Warwick PhD thesis, 2003), *passim*.

¹³⁵ TNA: PRO: DL1/370, information presented by Attorney General Beddingfield on the relation of Edward Syddenham, 16 May 1642. See also the depositions of Vicesimus Bradshaw, Francis Hudson, Peter Allen, John Burgine and William Winson in E134/1659/East27.

¹³⁶ TNA: PRO: E134/1659/East27, depositions of Vicesimus Bradshaw and Thomas Thacker. Quickset hedges were usually of hawthorn. (O. Rackham, *The History of the Countryside* (London, 1986), pp. 188-90.) The word 'stoop' (or, stoope, stoupe) was a dialect word for 'gate post'. Presumably in this context, stoops were posts that supported fences or railings. (R. Milward, *A Glossary of Household, Farming and Trade Terms from Probate Inventories* (Derbyshire Record Society, Occasional Paper, 1, 3rd edition, Chesterfield, 1986), p.53.)

¹³⁷ TNA: PRO: DL5/31, f. 447r.

John Burgine and his father, both ‘wallers’, were employed to erect fences in Chevin ward.¹³⁸ Having worked for about a fortnight they were approached by ‘sixteene of the cheifest of the Commoners’ who paid ‘two partes of their wages’. The Burgines were told to continue with their work and that these men would pay their wages in future.¹³⁹ Initially at least, therefore, the better sort of Chevin ward complied with the agreement. Elsewhere commoners contributed to the fencing costs only after coercion. In 1642 Edward Syddenham, the lessee of the king’s thirds, asserted that the commoners must have consented to the enclosure because they had willingly paid to fence and hedge the division of each ward. Contradicting this, commoners from all three wards claimed that they had neither been consulted about the enclosures nor voluntarily agreed to pay fencing costs, but had been threatened and intimidated.¹⁴⁰

To facilitate the physical division of each ward, a system was devised whereby each commoner would contribute to the fencing by erecting a particular section. In May 1634 several men were reported to the duchy council for failing to erect the sections of fencing allotted to them.¹⁴¹ In these areas, therefore, the Frith was left open and accessible as before. Given the widespread opposition to the enclosures, it is likely that many other commoners followed this course of (in)action.

¹³⁸ TNA: PRO: E134/1659/East27, deposition of John Burgine of Shottle, ‘waller’, aged c.50. Presumably by ‘two parts’, Burgine meant that the commoners paid the sums due for their two-thirds of the fencing. Burgine did not name the sixteen men but it is likely that they were some of the twenty-five who signed enclosure agreement for Chevin ward. (TNA: PRO: DL44/1117, documents 6 and 7.)

¹³⁹ They were later paid by John Seele and Roger Hodgkinson. Hodgkinson’s father, Francis, had been one of the signatories to the enclosure agreement for Chevin ward. (TNA: PRO: DL44/1117, documents 6 and 7.) Seele had been one of the churchwardens of Duffield parish in 1629. (DRO: D2402 A/PI 1/1, Duffield parish register 1598-1656).

¹⁴⁰ TNA: PRO: DL1/370, information presented by Beddingfield; TNA: PRO: DL1/370, answer of Robert Mellor *et al.*; TNA: PRO: DL1/372 (unnumbered), the joint and several answers of John Stanley, Richard Gratian, Thomas Talman, Robert Gretton, Robert Barrowclough, Thomas Johnson, George Webster, John Barlow, Henry Atkins & William Wallis to information presented by Sir Thomas Beddingfield on the relation of Edward Syddenham esquire, 4 November 1642.

¹⁴¹ TNA: PRO: DL5/31, f. 567v. The offenders were Thomas Storer, John Blackwall, Christopher Nayler and William Coates. The locations of the areas allotted to these men are not given.

Such tactics provide a further example of the commoners' passive resistance. Failure to erect fences delayed the completion of enclosure and caused the duchy to pursue the proponents through its courts, with little success but certain costs.

Fencing in Hulland ward was only erected at Syddenham's expense. In November 1635, when he sought assistance in recouping two-thirds of his expenses from the commoners, the duchy council ordered that the contribution of each township that intercommoned in the ward should be assessed and payment made to Syddenham accordingly.¹⁴² The matter dragged on until 1637 because four townships refused to pay what they considered unreasonable assessments.¹⁴³ This provides yet another example of very effective foot-dragging by the Duffield commoners and yet more expense to the duchy: the duchy court was obliged to attempt to enforce the order issued on Syddenham's behalf.

iii. 1633 onwards: Commoners and unpaid legal costs

Within the decree establishing the division of the Frith, provisions were made to reimburse expenses incurred by certain commoners during the course of the enclosure process. The remaining commoners were ordered to contribute towards these expenses in proportion to their commonable land; anyone who refused would

¹⁴² TNA: PRO: DL5/32, f. 133r, 28 November 1635. At the same time as Syddenham was trying to recoup some of his money from the commoners of Hulland ward, both he and the commoners faced a claim for non-payment of fees made against them by William Jordan, the surveyor who had marked out the original divisions. The orders made by the duchy court relating to the on-going saga of Jordan's claim can be traced through the court's Order and Decree books. The matter was even pursued by his widow. (TNA: PRO: DL5/32, ff. 160v, 212r, 229r, 310r, 327v, 336v; TNA: PRO: DL5/33, ff. 431v, 445r, 448v.)

¹⁴³ TNA: PRO: DL5/32, f. 215r, 28 May 1636. Idrichay, Ireton Wood, Mugginton and Mercaston were assessed at £7 12s each for the fencing in Hulland ward. The commoners alleged that Henry Gregson had procured the appointment to oversee the making of the fences and proceeded to profit from the enterprise both by erecting expensive fencing and by claiming to have disbursed more money than he actually had. They objected to being assessed on this inflated cost and offered to pay their rateable part of the 'reasonable Charges' expended on such fencing. (TNA: PRO: DL5/32, f. 329r, 15 June 1637.)

be barred from enjoying their common until they conformed.¹⁴⁴ In 1639, nearly six years after the enclosure was decreed, the duchy court was informed that forty-seven named commoners within Belper and Hulland wards were still refusing to contribute to the costs incurred on their behalf.¹⁴⁵ They were to be summoned to the court and would be debarred from using the common if they failed to pay the costs due.¹⁴⁶ Despite several further orders, nothing was resolved.¹⁴⁷

The enclosure decree stated that commoners' two-thirds in each ward should first be physically divided between the various townships and then between the legal commoners within each township. This would both prevent individuals overusing the remaining common and also ensure that only legal commoners had access. The duchy court offered to assist the rest of the commoners 'if any man shalbee refractory'.¹⁴⁸ Although the duchy could have restricted participation in the two-thirds through the traditional practice of stinting, officials chose to insist that the enclosed common be further subdivided. The attitude of most of the commoners to this divisive and restrictive proposal was indeed likely to be refractory given the virtually unlimited access that had previously been enjoyed by all inhabitants. It is unclear whether the duchy ever even attempted to implement this strategy. Given the resistance offered to arguably less controversial clauses in the enclosure decree, such

¹⁴⁴ TNA: PRO: DL5/31, f. 447r.

¹⁴⁵ TNA: PRO: DL5/33, f. 227v, order on behalf of William Dickens, gentleman, 3 July 1639. (Dickens was one of the leading commoners in Chevin ward.) As in the matter of the erection of the fences, the commoners of Chevin ward complied with this order. Although the duchy court had decreed that all commoners should contribute to the legal costs of the enclosure, apart from fines levied from offenders, the duchy would not actually benefit from actions against the offenders since the costs to be recovered were those expended by the commoners' representatives.

¹⁴⁶ Twenty-three (50 per cent) of these men were later identified by Syddenham as enclosure rioters. (TNA: PRO: DL1/370, information presented by Beddingfield.)

¹⁴⁷ The matter was revived in 1665, when twelve named men '& diverse others' were again being pressed for payment but the matter was dismissed because they successfully claimed that some were not tenants when the enclosure was made and that complainant had not incurred the original charges. (TNA: PRO: DL5/37, f. 88v, Francis Dickens (son of William) v [named] Duffield commoners, 18 February 1665.)

¹⁴⁸ TNA: PRO: DL5/31, f. 447v.

as sharing fencing costs and legal charges, it is likely that the duchy subsequently pulled back from such a radical course.

By 1640, contrary to the expectation expressed in the original commission, Charles's administration had reaped a meagre harvest of benefits from the enclosure: scant revenue from dwindling timber stocks and nominal rents from the commoners and from Syddenham.¹⁴⁹ Furthermore, expenditure on the enclosures, including legal proceedings in the duchy court at Westminster and before various commissions in Derbyshire, almost certainly ensured that it produced a net loss in the royal accounts.

iv. 1640: Commoners and the House of Commons?

During the 1640s there was a dramatic change in the nature of the opposition ranged against the enclosures at Duffield. Defensive, subtle resistance was superseded by offensive, outright attack. Just before this change of direction, however, the commoners may have tried one last peaceful resolution, namely an appeal to the local member of parliament.

It was later alleged that following the enclosure, some commoners, who were actually copyholders of the manor, had assumed that the terms by which the enclosed two-thirds were held (free and common socage, a form of freehold) implied that they were freeholders, and therefore entitled to vote in parliamentary elections.¹⁵⁰ Indeed,

¹⁴⁹ The king's right to the timber trees and underwoods in each of the commoners' two-thirds were to last for three years after the enclosures; thereafter no right could be claimed. (TNA: PRO: DL5/31, ff. 446v-47r.) The timber on the king's thirds was not mentioned; the duchy retained its rights to the trees as owner of the soil. The commissioners who set out the third parts were also charged with enquiring into the illegal felling of timber trees. (TNA: PRO: DL44/1127, document 3, 22 September 1633.) Syddenham had paid nothing for his lease as it had been granted to him in lieu of repayment of a debt. (See the earlier discussion of royal projects, Chapter 4, part 1, section iv, 'The improvement of the Frith'.)

¹⁵⁰ E134/1659/East27, interrogatory 6 for the plaintiffs. 'Did not the sayd Commoners (wich before that time were Coppyholders) take themselves to be freeholders by vertue of the sayd Letters Pattentes, And did they not sware themselves to be freeholders, And were they therby generally conceived to be inabled to elect Knightes of the Shire for the parliament, And did they not elect accordingly, ...?'. Two deponents confirmed that some of the copyholders had subsequently voted in parliamentary elections. Vicesimus Bradshaw stated that 'divers of the Commoners did appeare as

it was further alleged, that not only did they consider themselves enfranchised, but also that they had actually voted.¹⁵¹ As it has become clear that the commoners displayed acute political awareness during the course of their resistance to the enclosure, exactly *why* some of them might want to vote in parliamentary elections is worthy of brief consideration here.

In his study of parliamentary politics under the early Stuarts, Derek Hirst has found that as a result of the extension of the franchise ‘many people in the localities participated, and had expectations that parliament might deliver political goods to them’.¹⁵² The calling of a new parliament in 1640 provided the Duffield men with an opportunity for such participation.¹⁵³ In November 1640, following a contested election, Sir John Coke the younger was elected one of the knights of the shire for Derby.¹⁵⁴ Perhaps the Duffield voters hoped that Coke would repay their support by

freeholders at the elecion of chosinge for the parliament for the Countie beinge before that tyme but Coppihoulders’. Thomas Thacker stated that ‘there were many Coppieholders had noe voate for the eleccion of the Knightes of the shire And then afterwards some of the Commoners came and did give a voate for and in respect that the late kinge had graunted the said twoe third partes of the said Forrest or Chasse aforesaid to them and their heires’. (E134/1659/East27, depositions of Vicesimus Bradshaw, gentleman, and Thomas Thacker, gentleman, 28 March 1659.) See the discussion above on the use of interrogatories as evidence. (Chapter 4, part 1, section ii, ‘Composition for fines and the sale of copyholds.’) For a definition of free and common socage, see Kerridge, *Agrarian Problems*, pp. 33-34.

¹⁵¹ For a discussion of changes in land tenure, in particular copyholds being exchanged for freehold, see R. W. Hoyle, ‘Tenure and the land market in early modern England: or a late contribution to the Brenner debate’, *Economic History Review*, 2nd series, 43 (1990), pp. 1-20. Although the article is about landholding, rather than politics, Hoyle notes that ‘the creation of freeholds must have greatly enlarged the size of the county electorate. The political consequences of all this need working out’. (p. 17, n. 77.) For a discussion of the growing participation of the middling sort in parliament matters in the 1620s, see Christopher Hill, ‘Parliament and People in Seventeenth-Century England’, *Past & Present*, 92 (1981), pp. 100-24. Participation in parliamentary elections is discussed in depth in the conclusion. (Chapter 6, section vi, ‘From the politics of the parish to the politics of the realm’.)

¹⁵² Derek Hirst, *The Representative of the People? Voters and Voting in England under the Early Stuarts* (Cambridge, 1975), p. 4. Although Mark Kishlansky has questioned some of Hirst’s assertions regarding the way in which MPs were selected, nowhere does the former discuss the results of the extension of the franchise or consider why people would want to vote. (M. A. Kishlansky, *Parliamentary Selection: Social and Political Choice in Early Modern England* (Cambridge, 1986), *passim*.)

¹⁵³ For a brief discussion of the support given to opponents of crown policy by parliament from 1640 onwards, see Heather Falvey, ‘Crown Policy and Local Economic Context in the Berkhamsted Common Enclosure Dispute, 1618-42’, *Rural History*, 12 (2001), p. 145.

¹⁵⁴ Sir John Curzon was the other knight of the shire. Mary Frear Keeler has suggested that this was a contested election because, although there are no surviving records concerning Curzon and Coke’s opponents, Coke spent nearly £300 on board and lodging for ‘freeholders voting at the election’.

acting on their behalf concerning the perceived injustices arising from the enclosure of the Frith.¹⁵⁵ He certainly recognised the problems that might follow the creation of enclosures. In May 1641 he counselled his father against proceeding with certain enclosures within the county since enclosure in general aroused so much opposition amongst ‘the common people’.¹⁵⁶

Sir Edward Leech, lord of the manor of Duffield, might well have encouraged the commoners to petition Coke. He himself been one of the knights of the shire in the parliament of 1628 and would have appreciated the power and influence wielded by a member of parliament.¹⁵⁷ Although not a conspicuously active opponent of the enclosures in the 1630s, his opposition in the 1640s is documented.¹⁵⁸ Both he and some of the commoners disingenuously claimed that the Frith had not been a royal forest but had comprised the common waste of the manor and was therefore under his lordship and should, or rather could, not have been enclosed by the crown.¹⁵⁹ Whilst there is no concrete evidence that the Duffield men did approach Coke to speak out against the enclosure, it may be no coincidence that violence did not occur there until February 1642, more than a year after parliament had assembled.

Indeed, his expenses indicate that at least 1120 freeholders within the county had travelled to Derby to vote. Some of them may have come from Duffield but, although the home towns of many of the groups of voters are given in Coke’s accounts, Duffield is not mentioned specifically. (HMC, *Twelfth Report, Appendix II, the Manuscripts of Earl Cowper*, 3 (London, 1889), pp. 138-141, expenses incurred by Sir John Coke the younger, November 1640; Mary Frear Keeler, *The Long Parliament, 1640-1641: a biographical study of its members* (Philadelphia, 1954), pp. 41, 137.)

¹⁵⁵ Certainly rioters elsewhere sought support against oppressive landlords from the newly elected parliament. For example, following his arrest during the riots at Berkhamsted (Herts) in the summer of 1640, William Edlyn appealed to the House of Commons to support his stance against the crown’s ‘grand and arbitrary oppression’. (Falvey, ‘Crown Policy’, p. 145.)

¹⁵⁶ HMC, *Manuscripts of Earl Cowper*, 2, pp. 282-85, letter from Sir John Coke the younger to his father, 18 May 1641.

¹⁵⁷ For Leech’s brief career as a member of parliament, see R. C. Johnson *et al.*, *Commons Debates, 1628* (6 volumes, New Haven, 1977-c.1983), 1, p. 58; 2, p. 444; 3, p. 429; 4, pp. 19, 83, 178, 292, 362, 390.

¹⁵⁸ TNA: PRO: DL1/370, information presented by Beddingfield; TNA: PRO: DL1/372, answer of John Stanley *et al.*.

¹⁵⁹ It is somewhat ironic that some of the commoners chose to refute the fact that the Frith was a royal forest given that many of the customs that they were defending were technically customs of the forest rather than of the manor. The point of their refutation was that if the Frith were part of the manor, it had been sold to Leech via the Royal Contract Estates and so was not owned by the crown when the enclosures were made.

v. 1642-1647: A change in tactics

Up to this point opposition to the Duffield enclosures had been expressed in subtle ways. The variety of resistance strategies adopted by the commoners demonstrates the wide array of non-violent options open to protesters.¹⁶⁰ During the early 1640s, however, foot-dragging, non-compliance and litigation gave way to direct action at Duffield. Indeed, this period witnessed numerous outbreaks of disorder in many parts of the country, although, as we have already seen, historians have disagreed over the scale of the disorder that occurred at this time.¹⁶¹

Rioting broke out in the Frith in February 1642. In later years both local inhabitants and government commissioners emphasised that Syddenham had quietly enjoyed his land in the Frith until ‘the beginning of the Late warr’.¹⁶² Although such comments may simply have been referring to the chronology of events, they may, alternatively, have been implying a causal link for the timing of the destruction. On the one hand, having failed to regain access to the Frith by various peaceful methods, the physical destruction of the enclosures was the next logical step in the commoners’ fight, and therefore timing of this destruction may have been purely

¹⁶⁰ Protesters frequently viewed violence as a last resort, not least because punishments were harsh. See in particular Walter, ‘Public transcripts’. For a discussion of reluctant, orderly and legalistic rioting, see K. Wrightson, *English Society 1580-1680* (London, 1982), pp. 173-79. Threatening behaviour could be just as effective as outright violence. Wood has suggested that ‘one purpose of riots was to intimidate opponents ... highlighting [the rioters’] own restraint, while communicating their potential physical power’. (Wood, *Riot, Rebellion and Popular Politics*, p. 103.)

¹⁶¹ The discussion of differing interpretations of the scale of disorder can be found in Chapter 1, part iv, ‘Resistance and riot’. Brian Manning has described the general lawlessness that prevailed between the assembling of the Long Parliament in 1640 and the outbreak of civil war in 1642 as a ‘rising tide of protest and riot’ that rolled through the countryside. (Brian Manning, *The English People and the English Revolution* (2nd edition, London, 1991), p. 195.) For another description of lawlessness during the 1640s, see David Underdown, *Revel, Riot and Rebellion: Popular Politics and Culture in England 1603-1660* (Oxford, 1985), pp. 159-62. A more moderate view is put forward in J. S. Morrill and J. D. Walter, ‘Order and Disorder in the English Revolution’, in A. Fletcher and J. Stevenson (eds), *Order and Disorder in Early Modern England* (Cambridge, 1985), pp. 138-39. David Cressy has recently examined the ‘stresses and fractures in political and religious culture and disturbances to customary social relationships’ that occurred in England between 1640 and 1642; he does not, however, discuss enclosure riots in any detail. (David Cressy, *England on Edge: Crisis and Revolution 1640-1642* (Oxford, 2006), quotation from dustjacket.)

¹⁶² TNA: PRO: DL41/608/35, [endorsed] ‘Mr Att. Report concerning Duffield Forrest in Derbyshire’, May 1651; TNA: PRO: E134/1659/East27, interrogatory number 10 for the plaintiffs and many of the depositions.

coincidental. On the other hand, like the enclosure rioters in Newport (Essex), the Duffield commoners may have made a conscious decision to take advantage of the 'tumultuous times' to take back by force what they considered to be rightfully theirs.¹⁶³ Given the acute political awareness of the Duffield commoners, it is likely that the two strands were woven together: they used the excuse of general lawlessness to put the next phase of their protest into practice.¹⁶⁴ It should be noted, however, that, although enclosures in various parts of the country were attacked during wartime, such attacks were directed at the fences, rarely the political allegiance, of the landlord concerned.¹⁶⁵ David Underdown has observed that some kinds of wartime lawlessness, such as rioting against forest enclosers, were 'clearly related to pre-war social discontents'.¹⁶⁶ This was certainly the case at Duffield.

vi. Evidence for the riots

Drawing on documents from about 1580 to 1650 scattered through various archives, John Walter has assembled numerous examples that demonstrate that popular grievances could be, and were, exhibited in a variety of ways that stopped short of crowd action.¹⁶⁷ From his painstaking reconstruction of these activities it is clear

¹⁶³ HLRO: HLMP, 28 April 1643, affidavit of John Parish of Newport, Essex, on behalf of the earl of Suffolk. A decree issued by the duchy in 1662 stated that the Duffield commoners had destroyed the fences in the Frith during the 'late Tumultuous tymes'. (TNA: PRO: DL5/36, f. 198r, 21 November 1662.)

¹⁶⁴ Interestingly, in 1650 commonwealth commissioners charged with selling former crown lands noted that the Duffield commoners had been prevented from obtaining a legal reversal of the enclosure decree by the 'distraccion by the late Warres', highlighting the interruption of the legal system by the civil war. (TNA: PRO: E317/Derb/18, 'A Survey of the Royaltie of the late disforrested Forrest or Chase called Duffield Frith ...', returned 19 August 1650.)

¹⁶⁵ Brian Manning does point out, however, that many of the properties targeted by rioting crowds happened to belong to royalists: some were deer-parks; others former common land which, encouraged by the crown's own 'improvement' projects, royalists had enclosed; others, like the thirds of Duffield Frith, had been enclosed by the crown and leased to royal favourites and servants. (Manning, *The English People*, pp. 24-25.)

¹⁶⁶ Underdown, *Revel, Riot and Rebellion*, p. 159.

¹⁶⁷ Walter, 'Public transcripts', *passim*. For the recovery of examples of the language of defiance, see Andy Wood, ' "Poore men woll speke one day": Plebeian languages of deference and defiance in

that they are difficult to recover in the archives, not least because the authorities were rarely able to discover, let alone prosecute, the perpetrators. Why, then, has it been possible to reconstruct the various non-violent strategies adopted by the Duffield commoners in their efforts to hamper the completion of the enclosure of the Frith? The explanation lies in the fact that most of the evidence has been drawn from the archives of the duchy of Lancaster, in particular from the decree and order books of the duchy court, a court that operated almost continuously throughout the period and whose detailed records have survived.¹⁶⁸ Both Edward Syddenham and various Duffield inhabitants took advantage of the court's accessibility to bring suits and counter-suits. A cursory glance might suggest that the court generated an 'archive of repression', in which the commoners' resistance was reported to the duchy and subsequently investigated by its officials.¹⁶⁹ Closer inspection, however, reveals that this well-regulated and fully functional court in London was powerless to enforce its authority on an unruly and legally-aware community in distant Derbyshire. Since it has been possible to reconstruct the story of the passive and pre-emptive resistance employed by the Duffield commoners, the following study of the subsequent riots is not 'stepping-stone' history but the next chapter in an on-going saga.

Unlike passive resistance, the recovery of evidence for riots is, theoretically, more straightforward. Enclosure rioters, or at least their leaders, were usually reported to the authorities as soon as possible and consequently records were generated almost immediately after disturbances had occurred. However, the

England, c.1520-1640', in T. Harris (ed.), *The Politics of the Excluded, c.1500-1850* (Basingstoke, 2001), pp. 67-98.

¹⁶⁸ The court did not sit between late 1642 and mid 1646, but otherwise its business was continuous. The break in business is apparent in TNA: PRO: DL5/34, Duchy Court Decree and Order Book, Trinity Term 17 Charles to Trinity Term 1650.

¹⁶⁹ For an illuminating exposition of a particular set of documents from the 'archive of repression' of the Inquisition, see Carlo Ginzburg, *The Cheese and the Worms: The Cosmos of a Sixteenth-Century Miller*, eds J. and A. Tedeschi (London, 1980). The phrase 'archive of repression' is the translation of a term coined by A. Gramsci.

historian of unrest, indeed any historian, can only work with evidence found in surviving documents – arguing from negative evidence is particularly dangerous. Morrill and Walter have drawn attention to changes in the survival of sources and in the prosecution of riot during the 1640s and 1650s compared with earlier years.¹⁷⁰ During the war years (1642-46) many county institutions, such as assizes and quarter sessions, were suspended; in 1641 Star Chamber, which had been ‘preoccupied with the punishment of riot’, was abolished.¹⁷¹ While demonstrating that the extent of disorder during the English Revolution was not as great historians have assumed, Morrill and Walter’s essay also explained why such assumptions have arisen. Parliament took over the prosecution of riot and it is the survival of that institution’s detailed records that have allowed historians to continue the study of civil unrest.¹⁷²

In order to ensure that the perpetrators were prosecuted for riot, complainants frequently exaggerated the scale and nature of events; when attempting to reconstruct events such allegations, therefore, must to be treated with caution. Surviving documents may permit insights into the origins, nature and course of particular popular disturbances. Where they occur, competing narratives offered by the authorities, plaintiffs and defendants, can be weighed to produce a plausible account. Where the documents were generated during actions initiated by legal officers of the crown, however, the scales are usually tipped heavily in the establishment’s favour.

Although the surviving evidence for the riots that took place in Duffield Frith comprises four sets of papers, presented in three different courts, few details emerge. Unlike earlier cases presented in Star Chamber, there is no graphic rehearsal of

¹⁷⁰ Morrill and Walter, ‘Order and Disorder’.

¹⁷¹ Morrill and Walter, ‘Order and Disorder’, pp. 138, 158. See also D. Hirst, ‘The Failure of Godly Rule in the English Republic’, *Past & Present*, 132 (1991), pp. 33-66, in particular p. 48, where he has noted the patchiness of legal records during the period.

¹⁷² Indeed, it is unclear whether the Star Chamber’s jurisdiction over riot passed wholly to the Lords or whether some of it subsequently fell within the ambit of King’s Bench, the records of which were not consulted for this thesis.

crimes perpetrated in the Frith by the rioters, few descriptions of weapons wielded, and even the specific dates of the offences are not recorded.¹⁷³ The first three sets of documents arose from complaints lodged by Edward Syddenham. Firstly, an information that he presented to the duchy court in May 1642 and corresponding answers from some of those accused.¹⁷⁴ Secondly, the official record of subsequent proceedings in that court.¹⁷⁵ And thirdly, three petitions presented to the House of Lords in 1647 together with four brief affidavits.¹⁷⁶ Produced in 1659, some seventeen years after the riots, the fourth source comprises interrogatories and depositions in an Exchequer suit between the then owners of the ‘king’s thirds’ and over seventy named commoners.¹⁷⁷ The following reconstruction of events at Duffield uses these sources to steer a straight course between the Scylla of legal rhetoric and the Charybdis of inaccurate memory.

The four sets of documents do, however, shed light on different aspects of the riots. Those produced in the duchy court in 1642 recapitulate the various lawsuits and commissions that preceded the enclosure and interpret the subsequent activities of the commoners. Most importantly Syddenham names some 217 local people who were allegedly involved in the destruction of the fences, some of whom were subsequently examined. Unfortunately, but not surprisingly, the defendants’ answers provide no details of the riots: they restate their rights in the Frith and deny acting

¹⁷³ For the study of a riot based on Star Chamber proceedings, see, for example, Falvey, ‘Crown Policy’. In particular see pp. 123, 134 for a discussion of the exaggeration employed in Star Chamber litigation relating to riot. Roger Manning’s study of ‘village revolts’ was based exclusively on Star Chamber cases. (Manning, *Village Revolts*.)

¹⁷⁴ TNA: PRO: DL1/370; /371; /372.

¹⁷⁵ TNA: PRO: DL5/34, ff. 126, 138, 141, 148, 176, 191, 195.

¹⁷⁶ HLRO: HLMP, bundles dated 4 February 1647 and 20 March 1647, ‘petition of Sir Edward Sidenham’. See below for a discussion of the timing of Syddenham’s petition. (Chapter 4, part 2, section x, ‘1647: Edward Syddenham, a beleaguered landowner’.) There are no interrogatories or depositions. By way of contrast, the papers assembled on behalf of the landlords at Whittlesey comprise eleven sets of papers, the depositions covering sixty-four pages (admittedly in very large handwriting).

¹⁷⁷ TNA: PRO: E134/1659/East27, Fleetwood & Cooke v German Poole esquire *et al.*.

unlawfully in any way, while taking care not to admit what actually happened.¹⁷⁸

The duchy's Decree and Order Book minutes the proceedings and also records the reactions of some of the defendants to its rulings. It is Syddenham's petitions to the House of Lords in 1647, and the accompanying affidavits, that provide what evidence there is for the nature of the rioting, but as they were produced to support Syddenham's claim against the rioters for damages, rather than describe it in detail, these accounts measure the destruction wreaked by the rioters in monetary terms. The 1659 Exchequer suit conveys the finality of that destruction. Deponents for both sides confirm that the commoners had eventually repossessed the thirds that had been enclosed for the king.

vii. Spring 1642: Rioting in the Frith, phase one

Outright violence erupted in the Frith in February 1642, when, in Hulland and Chevin wards, rioters entered Syddenham's premises and destroyed much of the hedging and fencing around the enclosures. Similar events occurred in Belper ward the following month.¹⁷⁹ The chronology and scale is unclear: the riots in Hulland and Chevin may have been co-ordinated attacks that struck on the same day or one riot may have sparked 'copy-cat' action in the other and then in Belper ward. It is possible that Robert Mellor, John Storer, Robert Webster and Richard Haulkins kick-started the unrest when they pulled down some of the fences in Hulland ward but whether only these four men were involved on this occasion or whether many others

¹⁷⁸ None of the rioters at Whittlesey or Berkhamsted admitted anything either.

¹⁷⁹ HLRO: HLMP, bundle dated 20 March 1647, depositions of Humphrey Cowper and Robert Alsopp (Chevin ward); of Robert Ballidon and John Edge (Belper ward), 18 March 1647; of Thomas Redgate (Hulland ward), 18 March 1647; and of Ralph Aulte (Hulland ward), 18 March 1647.

were present is uncertain.¹⁸⁰ Having removed the fences, the commoners had driven their cattle into the king's third of each ward, a deeply significant act because 'in breaking down enclosing walls and placing cattle upon land from which they had been excluded, rioters were not only physically reoccupying contested land; they were also symbolically reasserting communal control over space and resources'.¹⁸¹

Despite eventually providing the names of some 217 alleged offenders, Syddenham gave no details of how, when or by whom fences and hedges were destroyed.¹⁸² Although few enclosing landlords ever witnessed the destruction of their property at first hand but relied on evidence from their steward, bailiff or other tenants, Syddenham was even less likely to discover exactly what had happened. As the absentee tenant of an enclosure, rather than a local landlord, he wielded little authority in the area. Effectively he was reliant on voluntary information concerning the riots, and few, apart from his sub-tenants in the enclosures, would be likely to provide it.

Soon after, on 7 March, he petitioned the House of Lords for a public order for quiet possession of his land.¹⁸³ In addition to a copy of a general order, dated 13 July 1641, the Lords granted him a specific order relating to offences committed in

¹⁸⁰ HLRO: HLMP, bundle dated 20 March 1647, deposition of Thomas Redgate of Turnditch, 18 March 1647. Whereas the other deponents named certain rioters and then added the phrase 'with many others', Redgate did not do so when describing the first riot that he witnessed in Hulland ward.

¹⁸¹ Wood, *Riot, Rebellion and Popular Politics*, p. 103.

¹⁸² Indeed, although his information is a huge document, containing some 5,000 words, Syddenham expended barely 1 per cent of them describing the riots. He claimed that 'in or about the moneth of March now last past [the named rioters] have now most unconscionably in a violent & tumultuous way entred upon all or the greatest parte of the said grounds that weare allotted & decreed for his Maiesties said third parte as aforesaid and have pulled downe and levelled the hedges and fences therof to the great damage of him the said Edward Siddenham'. (TNA: PRO: DL1/370, information presented by Beddingfield.)

¹⁸³ The Lords' order for 'the general quieting of possessions' first issued on 13 July 1641 was granted to numerous petitioners who were victims of enclosure riots. *The Lords' Journals* and the House of Lords Main Papers are littered with similar petitions in subsequent months and years. (See, for example, HLRO: HLMP, 5 August 1641, Sir Robert Heath regarding enclosures at Soham (Cambridgeshire); 20 December 1641, Endymion Porter at North Somercotes (Lincolnshire).) The full text of original general order may be found in *Lords' Journal*, 4, p. 312, 13 July 1641. It follows immediately after a particular order concerning unrest in Whittlesey.

Duffield.¹⁸⁴ He secured both orders, which were effectively injunctions against the rioters, in an attempt to put a brake on matters before they careered out of control. The orders empowered the sheriff and two or more justices to visit the sites of the riots to ensure that the owner's quiet possession was restored and remained so until any legal ruling to the contrary. Syddenham acted quickly and received the support of the county bench. Eight days later, on 15 March at the Derby Assizes, the assize judge read both orders out in open court in the hearing of those named as leading rioters: this bound them to refrain from further attacks on the enclosures.¹⁸⁵ It is not clear whether any other action was taken against the rioters at these assizes.¹⁸⁶

Having, theoretically, halted further destruction of his property, Syddenham set about confirming his legal possession of the thirds. He and his lawyers gathered evidence regarding the enclosure of the Frith and his information was presented to the duchy court on 18 May.¹⁸⁷ He described the initial suit against the earl of Newcastle and other leading commoners; the enclosure commissions; the representatives' agreements for the enclosures; the enclosure boundaries; the commoners' willingness to contribute to the fencing costs. He emphasised that the Frith was part of the duchy of Lancaster and that therefore the crown had the right to enclose it. Having carefully laid out the legality of his claim to the enclosed thirds, he identified ninety-four rioters and requested that any others subsequently identified

¹⁸⁴ *Lords' Journal*, 4, p. 629, 7 March 1642, 'Mr Sydenham concerning Lands in Derbyshire'; HLRO: HLMP, bundles dated 4 February and 20 March 1647.

¹⁸⁵ The rioters who were identified as being present at the Assizes were: Thomas Boulton, William Bludworth, William Johnson (Chevin ward); Henry Bradshaw, John Bruckshaw, Richard Fletcher, William Taylor (Belper ward); Richard Durden, Robert Mellor, John Storer, Robert Webster (Hulland ward). (HLRO: HLMP, bundle dated 20 March 1647.) Presumably they had been taken to the Assizes by the constables having been summoned by the local justices according to the terms of the Lords' order.

¹⁸⁶ There are no surviving records from the Midland Circuit during the early modern period in the National Archives; neither are there any stray records from these particular Assizes in the Derbyshire Record Office.

¹⁸⁷ TNA: PRO: DL1/370, information presented by Beddingfield.

might be added to this list.¹⁸⁸ The most recent indignity was a series of common law suits brought by the commoners against his tenants and servants for driving the commoners' cattle out of the enclosures. This tactic by the Duffield commoners was particularly effective as actions of this kind were costly and time-consuming to defend and diverted attention from the main problem, namely that the enclosures, which had allegedly been made with the consent of the commoners, had been destroyed.

The leading rioters were summoned to London and on 20 May both sides attended discussions in the duchy chamber.¹⁸⁹ The tenor of these proceedings seems to have been orderly and respectful. It is almost as though the riots were perceived by duchy officials as a continuation of the commoners' earlier passive resistance and so might be considered a legitimate form of protest against the attack on their legal common rights. In particular the officials were anxious that the defendants should be allowed to make their case because at that point it was not clear whether they were personally bound by the enclosure agreements. The court did, however, issue an injunction against all of the named defendants ordering them to comply with the House of Lords' injunctions and to halt their various lawsuits.¹⁹⁰

Six days later, on 26 May, five of the defendants, Robert Mellor, George Sellars, William Bludworth, John Storer and Thomas Milnes, presented their answers to Syddenham's information.¹⁹¹ Their sophisticated responses highlight their knowledge both of the law and of the authorities' main concerns. They claimed, for example, that anyone who had not consented to the enclosure agreements could not

¹⁸⁸ TNA: PRO: DL1/370, information presented by Beddingfield. These ninety-four names are written in the same hand as the main body of the document, a further 123 names have been inserted into a gap that had clearly been left for the names of 'divers others whose names his Maiesties said Attorney cannot yet learne but humbly desires to insert them hereunto'. Only two women, Susanna Fletcher and Ellen Robinson, both widows, are named.

¹⁸⁹ TNA: PRO: DL5/34, f. 141v, 20 May 1642.

¹⁹⁰ TNA: PRO: DL5/34, ff. 141v-42r, order dated 20 May 1642.

¹⁹¹ TNA: PRO: DL1/370, answer of Robert Mellor *et al.*

be bound by them; and that they had not entered the enclosures violently but peaceably in order to claim their rightful common. They even denied that the Frith had ever been a royal forest but had been part of the manor and so had been purchased by Sir Edward Leech in 1630; this being the case, the crown was in no position to enclose it. They then cited a decree issued in the duchy court in 1620, which stated, amongst other things, that tenants who claimed common in Hulland ward in right of their holdings in the manor should be allowed to enjoy their common rights in the *whole* of Hulland ward.¹⁹² Their final shot was a scarcely veiled threat of the problems that would ensue to both the duchy and the neighbourhood if these rights were denied: 'tillage will be much decaied [and] they their families & many hundreths of the Inhabitantes of the said severall townes very much ympoverished'. By raising the spectre of dislocation and poverty they sought to persuade the court to overturn its earlier decree that had established the divisions in the Frith.

Although the court ruled in Syddenham's favour, the commoners were neither fined nor punished but simply ordered to obey the injunction of 20 May. Predictably they paid little heed when attempts were made to serve the injunction; indeed several of them treated it with open contempt.¹⁹³ For example, John Storer snatched it up and refused to return it, thus preventing anyone else being served with it. Four others, having been formally served with the injunction, promptly pulled down much of the fencing in Hulland ward. In July 1642 a commission was issued to examine more of the offenders at Derby and in November their answers were

¹⁹² This was the decree that referred to the tenants of the manor of Ireton Wood, all of whom intercommoned in the Frith. (TNA: PRO: DL5/28, ff. 368v-380v, decree confirming an agreement between the king and customary tenants of the manors of Wirksworth *cum membris*, and Brassington, Bonsall and Ireton Wood *cum membris*, 5 July 1620.) See above, Part 1, section ii, 'Composition for fines and the sale of copyholds'.

¹⁹³ TNA: PRO: DL5/34, ff. 191v, 1 July 1642. The affidavits that reported these acts of contempt have not survived but were summarised in the Duchy's Decree and Order book.

presented to the duchy.¹⁹⁴ Frustratingly for the historian, these simply repeat, almost *verbatim*, the answers that had been presented in May. Clearly these commoners knew, or had been taught, not to implicate themselves.¹⁹⁵

viii. Summer 1642 to May 1645: Rioting in the Frith, phase two

Given the commoners' contempt of Syddenham and the orders issued on his behalf, it is hardly surprising that the injunctions failed to achieve the desired effect. In 1647, witnesses recalled further rioting in Chevin ward in the summer of 1642, in Hulland ward in February and the summer of 1643, and in Belper ward in May 1645.¹⁹⁶ Again, no violence against persons was reported.¹⁹⁷ There is no doubt that property was attacked and hedges, walls and fences levelled, and that Syddenham and his tenants were powerless to act. The actual scale of the unrest is, however, unclear. Each of the affidavits only identified four or five ringleaders, who were accompanied by 'many others'. These 'riots' may have been on a smaller scale than those of the spring of 1642. Similarly, as no specific dates were given for the outbreaks of violence, they may have been knee-jerk reactions that occurred whenever Syddenham or his tenants managed to re-erect some of the fences. Not

¹⁹⁴ TNA: PRO: DL5/34, ff. 195v, order dated 4 July 1642; TNA: PRO: DL1/372, answer of John Stanley *et al.*

¹⁹⁵ The court's verdict on these answers is not recorded. No entries relating to Duffield were made in Michaelmas Term 1642 and no further entries were made in the Order Book at all until 1646.

¹⁹⁶ HLRO: HLMP, bundle dated 20 March 1647, affidavits of Humphrey Cowper and Robert Alsopp (Chevin ward); of Robert Ballidon and John Edge (Belper ward); of Thomas Redgate (Hulland ward); and of Ralph Aulte (Hulland ward). Between them, these witnesses name sixteen rioters, all but three of whom had been identified by Syddenham in 1642.

¹⁹⁷ The fact that there are no reports of any people being physically attacked bears out the observations of earlier historians of crowd action. For the legalism, restraint and discipline exercised by eighteenth-century food rioters, see E. P. Thompson, *Customs in Common: Studies in Traditional Popular Culture* (London, 1991), Chapter 4, 'The Moral Economy of the English Crowd in the Eighteenth century', *passim*. For the lack of interpersonal violence in English food and enclosure riots, see C. S. L. Davies, 'Peasant Revolt in France and England: A Comparison', *Agricultural History Review*, 21 (1973), pp. 122-34, especially pp. 130-31. For the lack of violence against persons in rural riots during the civil war, see Wood, *Riot, Rebellion and Popular Politics*, p. 91. Morrill and Walter have emphasised that violence against the person remained rare even during rural riots during the civil war. (Morrill and Walter, 'Order and Disorder', p. 139.)

only did the rioters pull up fences and cut down wood but they also removed the fencing and wood so made re-erection more difficult. Once the enclosures had been laid open, they rendered the improved land useless by turning their own cattle into the cornfields and meadows. Their re-occupation of the Frith was complete: witnesses stated that the rioters' actions had laid Syddenham's property 'utterly waste' and estimated that they had caused £1,000's-worth of damage in each ward.¹⁹⁸ Although the sum is suspiciously rounded, it is not necessarily an exaggeration since deponents in 1659 estimated that sums in excess of £1,000 had originally been spent on improving the king's thirds.¹⁹⁹

In general terms, the story of the enclosure riots at Duffield is little different from that of many others that took place throughout England during the troubled years of the early 1640s. Although at first glance the picture of the riots at Duffield painted by the documentary evidence appears to comprise broad brush-strokes and scant detail, closer inspection nonetheless reveals some finely drawn vignettes of more remarkable incidents. Apart from the names of the leading rioters and the dates of the disturbances, the contents of the four affidavits, two relating to Hulland ward and one each to Chevin and Belper wards, that were presented to the House of Lords in 1647 are virtually identical. Whilst this might cast suspicion over the veracity of their content, slight differences suggest at least some input by the witnesses; indeed, two discrepancies in particular highlight important features of the riots.

Firstly, during the riots in Chevin ward in the summer of 1642, when Robert Alsopp urged William Johnson to obey the Lords' orders, Johnson retorted that 'he

¹⁹⁸ Syddenham himself first valued the damage at £4,000 in total and then increased it to at least £5,000. (HLRO: HLMP, bundles dated 4 February 1647 and 20 March 1647.)

¹⁹⁹ TNA: PRO: E134/1659/East27. See, for example, the following depositions concerning the money spent by Syddenham, his tenants and their under-tenants on improving the land: deposition of William Winson (Mr Henry Gregson, £400 in Hulland ward), Peter Allen (Mr Henry Smyth, £1,000 in Belper ward), Thomas Beeston (Francis Burton, £300; himself, £20 in Hulland ward).

cared not for the Lords orders hee would throw downe the fences'.²⁰⁰ This rare report of political speech by a Duffield rioter emphasises not only the strength of local feeling against the enclosures but also the extent to which external authority might be openly defied in such situations.²⁰¹ It would be tempting to speculate that this leading rioter was the scythe-grinder named William Johnson who died in 1647. Such an artisan would comfortably fit Buchanan Sharp's theory about the identity and social status of rioters in forests.²⁰² Such temptation should, however, be resisted as Johnson, a gentleman, was one of the defendants in the 1659 Exchequer suit and was then identified by two deponents as being a leading rioter in the 1640s. The highly political nature of Johnson's retort had serious implications because, in the mouth of Mr William Johnson, it provided a threat to the authorities: someone of his status was expected to uphold the law, rather than subvert it.

Secondly, Ralph Aulte was the only person to mention explicitly the weapons wielded by the rioters. Whereas the others simply stated that the rioters had 'pulled and cut down' the fences and walls, Aulte recalled that in February 1643 the rioters had been armed 'with guns Bills and other weapons' when they destroyed the

²⁰⁰ HLRO: HLMP, bundle dated 20 March 1647, depositions of Humphrey Cowper and Robert Alsopp (Chevin ward), 18 March 1647. As a tenant or under-tenant of Syddenham's who had benefited from the enclosure, Alsopp was likely to challenge Johnson's actions. There were at least three people named William Johnson living in the Duffield area at this time. For reasons given below, it is probable that the William Johnson who was one of the leading rioters was the 'Mr William Johnson' who, together with Thomas Everatt and Francis Hudson, both rioters identified by Syddenham, was appointed to supervise the disposal of William Tomlinson's property in 1648. Johnson and Everatt also acted as appraisers of Tomlinson's estate. (LRO: B/C/11, will and inventory of William Tomlinson of Hazelwood, husbandman (will dated 13 November 1648, inventory appraised 25 January 1649, probate granted 26 January 1649).)

²⁰¹ For the use of political speech in defiance of the authorities, see Wood, "Poore men woll speke one daye".

²⁰² LRO: B/C/11, will and inventory of William Johnson of Makeney, scythe-grinder (will dated 17 February 1647, inventory dated 3 April 1647, probate granted 28 May 1647). That a plebeian scythe-grinder might utter such contemptuous speech is certainly not implausible: Andy Wood and John Walter have gathered numerous similar examples of contemptuous speech by plebeians. (Wood, "Poore men woll speke one daye"; Walter, 'Public transcripts'.)

enclosures.²⁰³ Were it not for Aulte's evidence, one might have assumed that the rioters had simply used working tools and farming implements to break fences, dig up hedges and cut down trees.²⁰⁴ The allegation that the rioters possessed guns conjures up far more menacing activities, even though there is no suggestion that they had actually been fired.²⁰⁵ Intimidation by force of numbers was a powerful weapon in itself; when reinforced by firearms, opponents feared for their lives and the perpetrators, moreover, risked harsher punishment if they were convicted.

ix. Fire in the Frith

One further aspect of the rioting at Duffield merits special attention: two of the sources provide rare explicit references to a particular manifestation of protest, namely incendiarism.²⁰⁶ In the petitions that he presented to the Lords in 1647, Syddenham named those that he believed to be the 'chief leaders and incendiaries'. They and their associates had, amongst other crimes, 'Burned and pulled downe

²⁰³ HLRO: HLMP, bundle dated 20 March 1647, affidavit of Ralph Aulte (Hulland ward), 18 March 1647. Thomas Redgate's description of the events in Hulland ward in February 1643 makes no mention of weapons but he does name the same ringleaders and the same outcome. (HLRO: HLMP, bundle dated 20 March 1647, affidavit of Thomas Redgate, 18 March 1647.) Presumably there was a cycle of destruction and re-erection of the fences.

²⁰⁴ Lindley noted that during attacks on drainage works and enclosures in the fens, fenmen usually carried 'nothing more' than agricultural implements and tools suitable for filling in drainage and enclosure ditches, cutting down crops and rounding up livestock, and 'seldom sported guns, swords or daggers, weapons that might betoken a far more violent, or even murderous, intent'. (Lindley, *Fenland Riots*, p. 59.) One suspects that few rioters carried firearms because the very act of carrying them was illegal by virtue of an Edwardian statute.

²⁰⁵ On several occasions in July 1643, large numbers of enclosure rioters assembled in Gillingham Forest brandishing muskets, fowling pieces and other weapons. These were used to destroy enclosures and threaten the landlord's agent, not to attack him. (Sharp, *In Contempt of All Authority*, pp. 224-25.) Wood has commented that 'one purpose of riots was to intimidate opponents' and used these incidents to illustrate his point. (Wood, *Riot, Rebellion and Popular Politics*, p. 103.)

²⁰⁶ The only detailed study of arson in the early modern period is Bernard Capp, 'Arson, Threats of Arson, and Incivility in Early Modern England', in Peter Burke, Brian Harrison and Paul Slack (eds), *Civil Histories: Essays presented to Sir Keith Thomas* (Oxford, 2000), pp. 197-213. Keith Thomas has surveyed allegations of arson by witches to exact revenge upon their neighbours. (Keith Thomas, *Religion and the Decline of Magic* (London, 1971), pp. 531-33). Arson as a characteristic technique of rural protest in the nineteenth-century is discussed at length by John Archer. (J. E. Archer, *By a Flash and a Scare* (Oxford, 1989); J. E. Archer, 'Under cover of Night: Arson and Animal Maiming' in G. E. Mingay (ed.), *The Unquiet Countryside* (London, 1989), pp. 65-79.)

severall houses & Barnes'.²⁰⁷ Use of the word 'incendiary' is interesting in itself: Syddenham first employed it in the petition of February 1647. It was not used in the affidavits that were produced subsequently; the witnesses simply reported that buildings had been destroyed, without specifying that they had been burnt. It would be tempting to suggest that Syddenham's use of the term, and his description of the nature of the destruction, was an invention to call down the wrath of the Lords on the rioters; however, as we shall see, in 1659 witnesses in the Exchequer confirmed that arson had been employed in the Frith. In addition to its literal meaning of 'arsonist', 'incendiary' also has the figurative meaning of 'firebrand', that is, one who stirs up civil strife or violence.²⁰⁸ Not only did the leading rioters set fire to property, they also inflamed others to protest. Bernard Capp has drawn attention to the fact that labels such as 'incendiary' and 'firebrand' carried a powerful resonance and that to call someone an arsonist was actionable as slander.²⁰⁹

Some twelve years later, witnesses in the Exchequer were asked: 'Have not the same Fences bine lately *Burnt* and pulled Downe and Destroyed in the night tyme, or at any other tyme?'.²¹⁰ Of the twenty-one deponents, four confirmed that the enclosures had been pulled down *and* burnt.²¹¹ Ralph Aulte, whose property was attacked by arsonists, highlighted the seriousness of such occurrences in Duffield.²¹² Conveying at least some of fear that nocturnal incendiarism might inspire in the

²⁰⁷ HLRO: HLMP, bundle dated 4 February 1647, petition of Sir Edward Syddenham, 4 February 1647.

²⁰⁸ Meaning 'arsonist', the word 'incendiary' was first used in 1606; meaning 'firebrand', it was first used in 1631. (*OED*.)

²⁰⁹ Capp, 'Arson, Threats of Arson, and Incivility', p. 198, referring to W. Sheppard, *Action upon the Case for Slander* (London, 1662), pp. 36, 43, 132.

²¹⁰ TNA: PRO: E134/1659/East27, interrogatory 9 for the plaintiffs. As noted above, the information on which interrogatories were based was usually taken from an affidavit sworn by a witness.

²¹¹ TNA: PRO: E134/1659/East27, depositions of Thomas Thacker of Heage, gentleman; James Johnson of Cromford, yeoman; Edward Smedley of Shottle, yeoman; Ralph Aulte of Hulland ward, yeoman, 28 March 1659. The fact that only four of the twenty-one deponents mentioned burning suggests, firstly, that not all of the rioters were arsonists and, secondly, that the deponents were not necessarily simply repeating the words of the interrogatory but were reporting what they had actually seen.

²¹² Interestingly, Aulte did not mention arson in the affidavit that he made in 1647.

propertied, he recalled that ‘in the night time came a great Multitude of people disguised & pulled downe the fences and burned the doores of the barne’. But even this mob was not bent on attacking people: he had been ‘kept in his house’ whilst the destruction was wreaked outside. In order to protect their anonymity, this crowd of arsonists had employed two effective strategies. They had acted under cover of darkness *and* they had come in disguise.²¹³ Consequently, when relating this particular incident, Aulte failed to identify any of his attackers. The scene conjured up by Aulte brings to mind the ‘Saturnalia of power’ which James Scott defines as the first *public* act of defiance by the weak in their struggle against those in authority.²¹⁴

Capp has commented that the use of arson ‘as a weapon of collective rural protest needs no further elaboration’.²¹⁵ Whilst no elaboration is required on the *effectiveness* of such a weapon in a rural setting, where trees, hedges and crops abounded, some elaboration is, however, required regarding its actual *employment*. Capp has demonstrated that arson was very rarely prosecuted for at least two reasons: firstly, it was extremely difficult to distinguish from accidental fire; secondly, when arson was used in the course of, or to conceal, major crimes, the perpetrators were

²¹³ For the use of the cover of darkness to hide illegal acts and contemporary fears of ‘nightwalking’, see Paul Griffiths, ‘Meanings of Nightwalking in Early Modern England’, *The Seventeenth Century*, 13 (1998), pp. 212-38. For the use by protesters of disguise and the protection of anonymity, see E. P. Thompson, ‘The Crime of Anonymity’, in D. Hay, P. Linebaugh, J. G. Rule, E. P. Thompson and C. Winslow (eds), *Albion’s Fatal Tree: Crime and Society in Eighteenth-Century England* (London, 1975), pp. 255-344; A. Howkins and L. Merricks, “‘Wee be black as Hell’: Ritual, Disguise and Rebellion’, *Rural History*, 4 (1993), pp. 41-53, especially pp. 46-47. In contrast, when, at Whittlesey, William Haynes set fire to a hayrick standing near a farmhouse newly erected in an enclosure in the drained fen, the attack took place in broad daylight and Haynes was not disguised. This suggests that this incident was not premeditated but that Haynes acted on the spur of the moment. (HLRO: HLMP, bundle dated 26 June 1643, the case between the earls of Bedford and Portland and the inhabitants of Whittlesey, depositions of Peter Behague (16 June 1643) and Anthony Lawe (17 June 1643).)

²¹⁴ Frustratingly, although he employed the phrase, Scott developed the theme rather than the metaphor. Saturnalia was the Roman festival of Saturn that took place in mid-December, when masters and slaves exchanged garb and roles. By extension this has come to mean an orgy: presumably Scott meant an orgy of defiance. (Scott, *Domination and the Arts of Resistance*, Chapter 8: ‘A Saturnalia of Power: The First Public Declaration of the Hidden Transcript’.)

²¹⁵ Capp, ‘Arson, Threats of Arson’, pp. 199-200.

generally prosecuted under these other headings.²¹⁶ This would explain why, in his extensive survey of protest and popular disturbances, Roger Manning was able to identify only a handful of enclosure riots following which the perpetrators were accused of arson: proof, or at least accusation, of riot alone was sufficient to bring down the force of law on the malefactors.²¹⁷ The vivid epithet employed by Syddenham, the phrase in the interrogatory and Aulte's short account of the arson attack on his barn, therefore, provide concrete evidence of an element of riot frequently suspected by historians but rarely proved.²¹⁸

x. 1647: Edward Syddenham, a beleaguered landowner

At this point, it is necessary to consider why, if the enclosures at Duffield had been repeatedly attacked between 1642 and 1645, Syddenham apparently waited until the spring of 1647 to petition the House of Lords. Clearly the injunctions that he had been granted in 1642 had had no effect. The most obvious answer is that he had even more pressing problems to deal with since he was a staunch royalist. Indeed his support for Charles was the very reason why he was the lessee at Duffield: the crown had previously been indebted to him and the lease was granted to repay that debt.²¹⁹ That same support had resulted in the sequestration, in 1644, of his main property, Gidea Hall (Essex).²²⁰ Thus, he was in no position to act swiftly to protect his

²¹⁶ Capp, 'Arson, Threats of Arson', p. 199. For example, arson might be used to conceal house-breaking or murder.

²¹⁷ Manning, *Village Revolts*, pp. 43, 47, 128, 277. For a study of the extensive riots that involved arson in Cannock Chase during the 1580s, see Christopher Harrison, 'Fire on the Chase: Rural Riots in Sixteenth-Century Staffordshire', in Philip Morgan and A. D. M. Phillips (eds), *Staffordshire Histories: Essays in Honour of Michael Greenslade* (Keele, 1999), pp. 97-126. Hedges and the timber frame of a building were burnt down during the enclosure disputes in the Faversham Blean in 1602 and 1606. (Hipkin, "'Sitting on his Penny Rent'", pp. 16, 18.)

²¹⁸ Of course, at Duffield also the matter under consideration was not the *arson* itself, but the rioting during the course of which it occurred.

²¹⁹ TNA: PRO: DL12/31/85; DL12/31/86.

²²⁰ Syddenham's wife, Ann, had inherited Gidea Hall from her brother, Charles Cooke, who died in 1629. (W. R. Powell (ed.), *VCH, Essex*, 7 (Oxford, 1978), p. 68.) Following their sequestration, his wife was permitted to keep one fifth of her husband's estates for the support of herself and her six

Derbyshire property a second time; nor, as an absentee landowner, was he on hand to deal with the problem. His tardiness in presenting a second petition speaks volumes for his continued inability to act against the protesters.²²¹

On 4 February 1647, Syddenham petitioned the Lords to summon the twelve men whom he had identified as ‘the cheife Leaders & Incendiaries’ to answer for their contempt of the orders issued by the House in 1642.²²² The Lords ordered him to obtain affidavits to confirm his accusations; only then would those complained against be sent for.²²³ On 20 March he presented a second petition together with four affidavits.²²⁴ The House promptly summoned the named leaders to answer for their disobedience to the Lords’ injunctions.²²⁵ On 12 May, having heard Syddenham’s case, the Lords bailed the Duffield men to reappear three weeks later.²²⁶ He must have thought that it would be plain sailing thereafter, but, on 2 June, his suit foundered. That the House’s mood had swung in favour of the defendants is clear from the tone of its journal: ‘Sir Edward Syddenham’s cause’ had become ‘a Pretence of a Riot and Breach of Possession’.²²⁷ Furthermore, the defendants’ counsel pointed out that his suit should not be heard until he had compounded with

children. (Essex Record Office, D/DMY/15M50/235 (1644).) In 1642, Lady Syddenham had written to Lady Verney expressing her disbelief that the latter’s husband had chosen to support those that ‘tacke arms against thar laful king to depos him’. (Extract from F. P. Verney (ed.), *Memoirs of the Verney Family during the Civil War* (London, 1892), 2, pp. 100-102, reprinted in John Morrill, *The Revolt of the Provinces: Conservatives and Radicals in the English Civil War 1630-1650* (2nd edition, London, 1980), pp. 142-43.)

²²¹ This is stark contrast to the speed at which the rioters were dealt with at Berkhamsted and Whittlesey, highlighting the importance to the landowner of support by the authorities.

²²² HLRO: HLMP, bundle dated 4 February 1647, ‘humble petition of Sir Edward Sidenham Kt’, 4 February 1647. The other two documents in this bundle comprise a copy of the Lords’ general order dated 13 July 1641 and the order specifically granted to Syddenham on 7 March 1642.

²²³ *Lords’ Journal*, 8, p. 706, 4 February 1647, Sir Edward Syddenham’s petition.

²²⁴ HLRO: HLMP, bundle dated 20 March 1647, ‘humble petition of Sir Edward Sidenham knight’, 20 March 1647. In addition to the four affidavits, this bundle contains copies of the Lords’ two orders and a copy of Syddenham’s petition of 7 February. The list of the twelve leading rioters in the latter copy differs from the original: Richard Haulkins and Thomas Boulton have been added and Thomas Everatt and John Stables omitted.

²²⁵ *Lords’ Journal*, 9, p. 90, 20 March 1647, Johnson *et al.* to be attached at Sir Edward Syddenham’s suit.

²²⁶ *Lords’ Journal*, 9, p. 187, 12 May 1647, Sir Edward Syddenham’s cause.

²²⁷ *Lords’ Journal*, 9, p. 187, 12 May 1647; p. 230, 2 June 1647.

the state for his delinquency.²²⁸ Consequently the Lords postponed the case until 15 June, by which time Syddenham was to have compounded and given security for his composition.²²⁹ Until then no action would be taken against the rioters, who were to be freed upon bail to appear then.²³⁰ It seems that he did not meet his deadline: no further ruling concerning the riots in Duffield Frith during the 1640s is to be found in the Lords' archive. Having failed to obtain support from the Lords, Syddenham was powerless to force the commoners to allow him quiet possession of the enclosures in the Frith. Neither had he replaced the fences and hedges that had been destroyed during the previous five years. The Duffield commoners, not Syddenham, were physically, and according to them legally, in possession of 'the king's thirds'.²³¹

When, in 1647, he eventually petitioned the Lords again, Syddenham had expected to receive the same level of support as he received had in March 1642. Circumstances, however, had changed. In 1642 he was one of numerous landowners, many of them members of the House of Lords, who were victims of the general disorder that was perceived to be raging throughout the countryside. In 1647 he was a delinquent, a *persona non grata*, for whom parliament, even the Lords, had little sympathy.²³² Setting aside Syddenham's dubious political status, why should

²²⁸ *Lords' Journal*, 9, p. 230, 2 June 1647.

²²⁹ The records of the Committee for Compounding only show that, on 30 April 1646, 'Sir Edward Sydenham of Giddy Hall, Essex,' had presented a petition to compound. Nothing further is recorded so it is not possible to tell when Syddenham actually compounded but see below for evidence in the duchy court that he did so. (M. A. Everett Green (ed.), *Calendar of the Proceedings of the Committee for Compounding etc, 1643-1660* (5 volumes, London, 1889-92), 2, *Cases, 1643 – June 1646*, p. 1257.)

²³⁰ Further evidence that the Lords were sympathetic towards the Duffield men comes from a ruling that they made on 3 June. In order to recoup more than £20 that he had spent whilst fetching the rioters from Derbyshire and keeping them in custody, the king's messenger petitioned the Lords to keep the men in custody until they had paid his costs. This petition was rejected. (HLRO: HLMP, petition of Michael Baker, His Majesty's messenger, and deputy to the Gentleman Usher, 3 June 1647.) The previous day the Lords had ordered that when Syddenham had compounded, a resolution would be made concerning 'who should pay the Charges which the Defendants have been at.' (*Lords' Journal*, vol. 9, p. 230, 2 June 1647.)

²³¹ TNA: PRO: DL5/35, f. 71v, 11 June 1651.

²³² He was knighted by Charles I sometime between March 1642, when as Edward Syddenham, esquire, he had presented his first petition to the Lords concerning the riots, and February 1647, when

the Lords be so reluctant to support a landowner against an unruly mob? Part of the explanation lies in the fact that the last incident had occurred two years previously, and, regardless of the state of fences and enclosures, the area was currently quiet. He was, therefore, petitioning for punishment and recovery of damages, rather than for the suppression of disorderly hordes. There was no present threat to the country around Duffield. By this time, moreover, the number of riots being reported to the Lords from elsewhere in the kingdom was diminishing.²³³ The 'rising tide' of disorder that had swelled during the early part of the decade was ebbing away.²³⁴

At Duffield, therefore, non-violent resistance to the enclosures took many forms: pre-emptive strikes, such as removal of the surveyor's markers; foot-dragging, such as the reluctance to pay fencing costs; litigation that was commenced when commoners' animals were removed from the enclosures. The use of violence, which only occurred when all else had failed, coincided with the general lawlessness of the civil war period. It was, however, the violence that ensured the removal of the enclosures; the earlier passive resistance had only served to delay their erection. As we shall see, the commoners subsequently returned to legal methods in their attempts to secure their repossession but first we need to consider the identities of those who were alleged to have resorted to violence.

as Sir Edward Syddenham, he had presented the second. (There is no record of his knighthood in G. E. Cockayne, *The Complete Baronetage*, 2, 1625-1649 (Exeter, 1902).)

²³³ In the records of the House of Lords most of the references to rioting between 1647 and 1650 relate to fen drainage and enclosures in Gillingham Forest. A search of newsbooks would, doubtless, reveal further reports of unrest.

²³⁴ Manning, *The English People*, p. 195.

Part 3: The rioting crowd at Duffield

Records of early modern crowd action were usually created by or for the authorities. Consequently such reports convey much about elite attitudes towards, and preconceptions of, crowds and rather less about the actual crowds themselves.²³⁵ It was reassuring to be able to attribute such outbreaks of lawlessness to ‘the rude multitude’, that part of local society that ‘most propertied contemporaries would have thought of as “naturally” given to disorder’.²³⁶ The alternative was unpalatable: any rioters who were persons of quality ‘were cankers at the heart of society; renegades of power, position and wealth were much more dangerous than the desperate poor’.²³⁷

In his study of enclosure riots in the West Country forests, Buchanan Sharp has concluded that most of the rioters were ‘marginally poor and landless, including artisans’ and that, contrary to earlier findings, there was no mass participation by yeomen and husbandmen urged on by gentry.²³⁸ His conclusions are, however, problematic. Firstly, he has cited the authorities’ inability to convict gentlemen suspected of participation as proof that local landowners had not been involved in the riots, arguing that the compensation allotted to them at enclosure had ensured their acquiescence. Secondly, his analyses of the status of known rioters actually showed

²³⁵ For elite attitudes towards the riots that took place in Essex in the summer of 1642, see John Walter, *Understanding Popular Violence in the English Revolution: The Colchester Plunderers* (Cambridge, 1999), Chapter 7, ‘Cloth and Class’, especially pp. 238-39. For crowd action and elite attitudes in the eighteenth century, see Edward Thompson, ‘The Moral Economy of the English Crowd in the Eighteenth Century’, *Past & Present*, 50 (1971), reprinted in E. P. Thompson, *Customs in Common* (London, 1991).

²³⁶ Walter, *Understanding Popular Violence*, p. 238.

²³⁷ Sharp, *In Contempt of All Authority*, p. 131.

²³⁸ Sharp, *In Contempt of All Authority*, p. 127. Sharp was questioning the findings of Allan and of Kerridge. (D. G. C. Allan, ‘The Rising in the West, 1628-1631’, *Economic History Review*, 2nd series, 5 (1952), pp. 76-85; E. Kerridge, ‘The Revolts in Wiltshire Against Charles I’, *Wiltshire Archaeological Magazine*, 57 (1958-60), pp. 64-75.)

that a substantial proportion were, indeed, husbandmen and yeomen.²³⁹ He also briefly surveyed 'similar' riots elsewhere, including those in Chevin ward of Duffield Frith, which he described as 'a forest with a large population of *cottagers and miners*'.²⁴⁰

Whilst agreeing that, in general, enclosing landlords divided tenants and cottagers by offering compensation only for loss of legal common rights, Andy Wood has demonstrated that in forest areas crown policy faced widespread and often violent resistance due to the 'capacity of local farmers, tenants, cottagers and industrial workers to transcend local social differences and to unite against a common opponent'.²⁴¹ The main objection to an allotment of land in an enclosed forest was that, both literally and figuratively, it defined a tenant's access to grazing that had previously been, effectively, unlimited. At Duffield the majority of tenants had opposed plans to divide the commoners' two-thirds amongst the legal commoners.

In their survey of disorder during the 'English Revolution' Walter and Morrill have suggested that the local elite led popular opposition to enclosures in forest and fen areas. They attributed very specific economic motives for the involvement of such men: 'the proposed conversion from pastoral to arable economies struck at the pursuit of their market interests which were best served within the context of regional

²³⁹ For example, in the Gillingham riots, of the seventy-four convicted, twenty-one were yeomen and husbandmen. (Sharp, *In Contempt of All Authority*, pp. 127-31.) As Underdown points out, this figure is, in fact, 'an impressive number in proportion to the social composition of a forest community'. (Underdown, *Revel, Riot and Rebellion*, p. 109.)

²⁴⁰ Sharp, *In Contempt of All Authority*, p.223, emphasis added. Sharp's sources for the riots in Chevin ward are *VCH Derbys*, 1, pp. 420-21 and J. C. Cox, *The Royal Forests of England* (London, 1905), pp. 202-03. In fact, the section in the *VCH*, written by Cox, is a *verbatim* copy of his earlier work; he does not mention the riots in Hulland and Belper wards at all. Sharp's assessment of the Frith's population seems to be based on findings about forest populations elsewhere and the fact that Cox mentions the coal pits in Chevin ward. As we have seen, Duffield's population was *not* typical of forest areas.

²⁴¹ Wood, *Riot, Rebellion and Popular Politics*, p. 90.

specialisation by their ability to over-exploit the waste and commons'.²⁴² These men used the extra grazing land afforded by forests and fens to increase their farming output.

Hipkin has, however, recently played down the debate over the status of those who actually led enclosure riots, emphasising instead that resistance to enclosures in forests and fens was widespread and persistent because the economic interests of a wide range of people were adversely affected by these enclosures.²⁴³ Opponents comprised a 'broad-based federation of convenience' amongst commoners because in such areas 'there were subsistence *and* profit-making agenda amongst the opponents of the crown projectors'. We have already noted that at Duffield commoners included inhabitants who practised mixed farming on a commercial scale as well as 'ancient cottagers'.

i. Rioters in the Frith in early 1642

The destruction that took place in the Frith in February and March 1642 was the most strident speech, but by no means the only outburst, in the on-going political conversation at Duffield. Violence had been the last resort, perhaps the natural progression, when all peaceful means of opposition had failed. In the information that he presented to the duchy court in May 1642, Edward Syddenham provided few details of the riots themselves but identified some 217 people who had allegedly been involved (see Appendix 7, 'Duffield rioters named by Syddenham').²⁴⁴ In 1659 it

²⁴² Morrill and Walter, 'Order and Disorder', p. 153. Morrill and Walter label these local elite as the 'middling sort', that is men who were below the level of gentry and *usually* involved in the maintenance of order in the locality.

²⁴³ Stephen Hipkin, 'Property, Economic Interest and the Configuration of Rural Conflict in Sixteenth and Seventeenth-Century England', in Stephen Woodhams *et al.* (eds), *Migrants and Minorities (Socialist History, 23 (special edition)*, London, 2003), p. 81.

²⁴⁴ TNA: PRO: DL1/370, information presented by Beddingfield. Syddenham named 215 men and two women. In the following analysis the term 'rioter' will be used as shorthand for 'one of those named by Syddenham': there is no way of knowing what each individual had done. Some may have

was suggested that during the 1640s no ‘persons of any Considerable Concerne’ had opposed the enclosures.²⁴⁵ At that later time the authorities wanted to be reassured that the participants had all, or mostly, been ‘inconsiderable persons of small or noe Visible Estates or Fortunes’.²⁴⁶ The following analysis of the rioters identified in 1642 seeks to determine whether the authorities could have been so reassured and to uncover possible loops of association, apart from a common interest in the Frith, which linked these people.²⁴⁷ But before investigating the protesters themselves, the identities of Syddenham’s informants will be considered.

Under normal circumstances, depending on the offences committed, constables or manorial jurors reported local malefactors to the authorities. Whether these men would inform on such a sensitive issue as the destruction of enclosure fences, however, is uncertain, especially since some might themselves have been actively involved.²⁴⁸ At Duffield, Thomas Webster, one of those who hindered the surveyor in 1633, was ‘head burrow’ (constable) and reeve of Hulland at the time.²⁴⁹

physically destroyed fencing; some may have incited others to riot; some may have been accused erroneously. Appendix 7 lists the rioters and summarises documentary evidence of their status, landholding, etc.

²⁴⁵ TNA: PRO: E134/1659/East27, interrogatories 18 for the plaintiffs. ‘Alsoe Doe you know or believe that all or the greatest parte of thos \Considerable persons/ that had right of Common in the sayd Forrest or Chace or thos of cheifest Concerne therin \or thos under whom they Clayme/ Did Consent to the inclosing therof and were well Content with the sayd twoe partes And is ther any \other/ person \or persons/ of any Considerable Concerne therin that \nowe/ opposes the same And are not all or most of them inconsiderable persons of small or noe Visible Estates or Fortunes or whoe is ther to your knowledg of any Estate or Considerable Concerne that hath opposed the same or bine active in throwing Downe the inclosure therof, Declare you knowledg therein.’ The named defendants in the 1659 Exchequer case had not necessarily been rioters. Amongst other things, the plaintiffs were attempting to prove whether the defendants were legal commoners in the Frith. From the historian’s point of view, it is an invaluable document for it places all of the defendants in their manorial properties.

²⁴⁶ Not one of the twenty-one deponents for the plaintiffs responded to interrogatory that aimed to establish the status of those who opposed the enclosures. A few rioters were, nevertheless, identified in answers to other interrogatories.

²⁴⁷ For the concept of ‘loops of association’ in anti-enclosure protests see Hipkin, “‘Sitting on his Penny Rent’”, p. 23.

²⁴⁸ During the Midland Rising of 1607 ‘constables and the liek’ expressed their ‘great dislyke’ of enclosure that might provoke a ‘storm amongst the meaner sort’. (TNA: PRO: SP14/35/52, quoted in Hindle, ‘Persuasion and protest’, p. 72.)

²⁴⁹ TNA: PRO: DL44/1127, document 4, report of John Lane the younger, 18 September 1633. Details of Webster’s landholding and office holding have been added at the bottom of this document.

Analysis of the lists of jurors at the manor court held on 7 October 1644 shows that thirteen (44 per cent) of the freehold jurors and five (33 per cent) of the customary jurors had themselves been named in Syddenham's information.²⁵⁰ It therefore seems likely that, unable to depend on the usual sources, Syddenham had had to rely on his own tenants and their under-tenants to identify the miscreants, especially as he was simply the non-resident lessee, rather than the lord of the manor, and so wielded no formal power locally.²⁵¹ Syddenham's main informant in 1642 was probably Henry Gregson. In the early 1630s, in his role as woodward of the Frith, Gregson had reported inhabitants who had illegally cut down wood and timber.²⁵² At the enclosure not only did Gregson receive a substantial amount of land in Hulland ward but he was also appointed to oversee the erection of the fences: a task that set him on a collision course with most of the inhabitants.²⁵³ It would be erroneous to assume, however, that the two John Lanes had been among Syddenham's informants. Although both had assisted the surveyor, and Lane junior had reported the commoners' activities to the duchy, Syddenham subsequently identified both father and son as rioters.²⁵⁴ Of the six men who made affidavits in 1647, one, Ralph Aulte,

²⁵⁰ DRO: D1404/16, Duffield Court Book, ff. 65v-68r, Court of Frankpledge held on 7 October 1644. The freehold jurors who were named as rioters were Lancelot Brett, Thomas Dudley, Richard Gibson, William Glewe, William Hayne, John Hodges, William Johnson, William Rayner, Anthony Simpson, John Stables, William Swift and Robert Webster. The customary jurors were John Alton, James Mellor, Richard Peate, Thomas Stalman and Thomas Webster.

²⁵¹ As we shall see, the men who made depositions concerning the riots at Whittlesey were nearly all tenants of new farms that had been created in the drained fens.

²⁵² See, for example, TNA: PRO: DL44/1127, information of Henry Gregson of Turnditch, gentleman, woodward of his majesty's woods within the forest of Duffield, 22 September 1633.

²⁵³ TNA: PRO: DL5/32, f. 329r, 15 June 1637. The commoners of Mugginton and Mercaston claimed that Gregson had overcharged the various townships for their contribution to the fencing and had also submitted inflated claims for reimbursement for the cost of the actual fencing. Prior to enclosure he had rented the warren in Hulland ward, part of which subsequently allotted to the king. He was compensated with the equivalent amount of land (thirty-two acres) in the enclosure. (TNA: PRO: DL5/31, f. 447r, TNA: PRO: E134/1659/East27, deposition of William Winson of Shottle, 28 March 1659.) Destruction of the fences struck directly at Gregson's own authority and also his own pocket: Winson estimated that Gregson had spent at least £400 improving his part of the enclosure.

²⁵⁴ TNA: PRO: DL44/1127. In 1644 John Lane junior was a freehold tenant in Hulland. (DRO: D1404/16, ff. 65v-68r.)

is known to have been Gregson's tenant in Hulland ward.²⁵⁵ Since they were willing and able to report the destruction within the wards, it is likely that the other five also rented land in the enclosures.²⁵⁶

Nowhere in his information of May 1642 did Syddenham suggest that any of the rioters that he had identified were illegal cottagers, or squatters, or even poor. On the contrary, he claimed that *all of them* were either tenants who had consented to the enclosures and had signed the agreements themselves or tenants who currently held the land of others who had signed.²⁵⁷ Until recently they had all quietly enjoyed the benefits of the two-thirds. Lately, however, they had been informed by 'some ill affected persons to his Majesties honours profit' that following disafforestation the king had renounced his title in the Frith and therefore had no right to enclose it. It was this that had stirred these commoners to enter the king's thirds in 'a violent & tumultuous way' and level the fences and hedges.²⁵⁸ Syddenham argued that precisely because all of the alleged rioters were legal commoners they were bound by

²⁵⁵ HLRO: HLMP, bundle dated 20 March 1647, affidavit of Humphrey Cooper of Shottle, yeoman, and Robert Alsopp of Hazelwood, husbandman, regarding Chevin ward; affidavit of Robert Ballidon of Shottle, husbandman, and John Edge, of Belper, regarding Belper ward; affidavit of Thomas Redgate of Turnditch, regarding Hulland ward; affidavit of Ralph Aulte of Hulland ward, husbandman, regarding Hulland ward. In his deposition in the Exchequer case of 1659, Aulte explained that he was tenant in the enclosure to Mr Gregson: originally to Henry Gregson and currently to his son, George. (TNA: PRO: E134/1659/East/27, deposition of Ralph Aulte of Hulland Ward, yeoman, 28 March 1659.) In 1650 Aulte's holding in the ward, which comprised a house and barn and two acres, was valued at 20s per annum. (TNA: PRO: E317/Derb/18.)

²⁵⁶ Although some details of Syddenham's tenants and sub-tenants have survived in depositions in TNA: PRO: E134/1659/East27, these five are not mentioned. They are known to have been landholders elsewhere in the manor. In 1644 Robert Ballidon was a freehold tenant in Shottle and as was Humphrey Cooper, and Robert Alsopp was a freehold tenant in Hazelwood. (DRO: D1404/16, ff. 66v-67r.)

²⁵⁷ TNA: PRO: DL1/370, information presented by Beddingfield. Syddenham claimed that 'they [the named rioters] and those under whome they clayme did consent & agree to the said improvement, and subscribed their names to a writeinge testifieinge their said consent'. It has been suggested to me that Syddenham and his legal team may have compiled the list of 'rioters' from lists of current tenants (who were, of course, legal commoners), which have since disappeared. This is unlikely since such documents would have had to be supplied to Syddenham by Sir Edward Leech, who had purchased the manor of Duffield *cum membris* from the Corporation of the City of London in 1630, and Syddenham included Leech himself in the list of alleged rioters.

²⁵⁸ In fact, the original agreements had only been signed by thirty-four leading commoners, but these men were deemed to represent the commoners as a whole, hence all of the commoners were said to have consented to the enclosures. (TNA: PRO: DL44/1117, Duffield enclosure agreements, returned to the duchy court on 8 August 1632.)

the duchy's decrees and orders concerning the Frith. Of course, those whom he named were not necessarily the only people who had destroyed the fences during the spring of 1642 but his argument relied on identifying the offenders as commoners. In 1642 he aimed to prove that the commoners had acted illegally when they broke the agreements and to persuade the duchy to take action against them accordingly; it was not until 1647 that he aimed to persuade the House of Lords to recoup the cost of broken fences from the malefactors.

Analysis of Syddenham's list of offenders shows that sixteen of the alleged rioters, or their fathers, had indeed been signatories to the enclosure agreements of 1632 (see Appendix 7).²⁵⁹ Speaking on behalf of the eleven who had themselves signed, John Stanley, George Sellars and Thomas Milnes admitted signing the agreements but claimed that the terms to which they had subscribed were not those that had been executed. In particular they objected to the way in which the king's thirds had been chosen.²⁶⁰ Although Robert Mellor admitted that his father had been a signatory, he claimed that the legal form of his landholding differed from his father's and that therefore he was not bound by the agreement.²⁶¹ Mellor, Milnes and Sellars, together with John Storer, further claimed that their fathers had been parties to the decree of 1620 that confirmed that their landholding permitted them to

²⁵⁹ TNA: PRO: DL44/1117. The eleven signatories who were named as rioters were Anthony Bradshaw of Belper, Anthony Bradshaw of Duffield, John Litchfield, Thomas Milnes, George Pole, William Rayner, George Sellars, John Stables alias Baker, John Stanley, John Taylor and Thomas Wollett. The five rioters whose fathers had been signatories were William Bludworth (father, John), John Bruckshaw of Dalley (father, Francis), Richard Lees (father, John), Robert Mellor (father, William) and Sampson Wollett (father, William).

²⁶⁰ TNA: PRO: DL1/370, answer of Robert Mellor *et al.*; TNA: PRO: DL1/372, answer of John Stanley *et al.*.

²⁶¹ TNA: PRO: DL1/370, answer of Robert Mellor *et al.*. Bludworth simply stated the terms by which he held his land and did not mention what his father's holding had been.

common in the *whole* of Hulland ward and that therefore their common rights could not be restricted to two-thirds.²⁶²

Sydddenham's claim that all of the alleged rioters were legal commoners is difficult to verify in the absence of any rental or survey of the manor of Duffield *cum membris* dating from the 1640s.²⁶³ However, the record of the court of frankpledge held on 7 October 1644 shows that fifty-five of the 'rioters' were freehold tenants within the manor, and that of these thirteen were also freehold jurors.²⁶⁴ The only customary tenants mentioned in the court records were the fifteen who comprised the customary jury, of whom five were alleged rioters. The paucity of documents referring to copyholders hampers this analysis considerably since, as we have already seen, the majority of tenants were copyholders.²⁶⁵ Nevertheless the proven participation of numerous freehold tenants and of some copyholders suggests that many, although not necessarily all, of the other named rioters were also legal commoners.²⁶⁶

²⁶² TNA: PRO: DL1/370, answer of Robert Mellor *et al.*. Clearly Mellor was not troubled by the apparent contradiction of his two claims.

²⁶³ As the manors had passed out of crown ownership in 1628, following the Royal Contract, any manorial documents generated after that date are not part of the duchy archive. A few documents relating to the manor of Duffield are held at the Derbyshire Record Office but there are no surveys or rentals from the mid-seventeenth century. Regarding the rentals in TNA: PRO: DL44/1142, given the number of the changes in landholding that would have taken place in the intervening sixteen years, they are virtually useless as sources for landholding by the rioters.

²⁶⁴ DRO: D1404/16, ff. 65v-68r.

²⁶⁵ An information and corresponding answers made in 1639 identify twenty-nine bondhold and leasehold tenants in the manor, of which ten were rioters; however, as eight of these were also freehold tenants, this source only reveals two more customary tenants: Anthony Bradshaw of Duffield and Thomas Wollett. (TNA: PRO: DL1/360 (unnumbered), the Attorney General by the relation of Sir Edward Leech *versus* William Rayner and others, 18 November 1639; TNA: PRO: DL1/361 (unnumbered), Thomas Challenor and others *versus* Sir Edward Leech, 2 December 1639.) Deponents in the Exchequer in 1659 described the property of most of the seventy-four defendants, of whom thirty-three were named as rioters, but did not state whether their property was freehold, copyhold or leasehold. (TNA: PRO: E134/1659/East27.) The information has been recorded in Appendix 7.

²⁶⁶ At the same court nine of the named rioters were fined for breaking the assize of ale. (DRO: D1404/16, ff. 65v-68r.) The offenders were Robert Barker, William Blackwall, Thomas Glewe, Henry Palfreman, Thomas Peate, Anthony Simpson, George Swifte, George Webster and Thomas Wright. Whilst three of them were freeholders and at least one was subsequently described as a yeoman, the social status of the other five is unclear. (Brewing was frequently a means by which poorer inhabitants supplements their income. For the enforcement of the assize of ale, see, for example, Hindle, *State and Social Change*, pp. 152-53.)

ii. Persons of 'Considerable Concerne'

Despite the later suggestion to the contrary, it is clear that many of the alleged rioters *were*, in fact, persons of 'Considerable Concerne'.²⁶⁷ Seven of them had even recently served as churchwardens.²⁶⁸ William Bludworth, one of the 'chief leaders and incendiaries' in Chevin ward, was actually in office at the time of the riots.²⁶⁹ Similarly, just after Richard Orme became warden for Duffield he was accused of rioting. Of the sixteen wardens who served the parish between 1635 and 1642, nine were identified as rioters. Churchwardens, usually drawn from the better sort of the parish, were pillars of the local community and were expected to set an example. Their duties included reporting a whole range of misdemeanours to the church courts and assisting the overseers of the poor.²⁷⁰ What, then, are we to make of their participation in enclosure riots? Hindle has suggested that the parish officers who attacked the enclosure at Caddington in the 1630s were acting on behalf of the poor of the parish but he conceded that they may also have been motivated by a desire to keep down the poor rates, which could be achieved by restoring open access to the common.²⁷¹ Hipkin, on the other hand, has reasoned that when the parochial elites in the Faversham Blean area attacked the enclosures there, they were not intentionally

²⁶⁷ In 1659, it was suggested that no 'persons of any Considerable Concerne' had opposed the enclosures. (TNA: PRO: E134/1659/East27, interrogatories 9 and 18 for the plaintiffs.)

²⁶⁸ The rioters who had been churchwardens were: Thomas Everatt representing Windley in the accounting year 1635; Francis Hudson (Hazelwood) in 1636; his co-warden for the year, William Parker, (Duffield); Thomas Stalman (Duffield) in 1638; William Rayner (Duffield) and John Stables (Windley) in 1639; and Sampson Wollett (Hazelwood) in 1640. (D2402 A/PI 1/1, Duffield: the parish of St Alkmund, register of baptisms, marriages and burials, 1598-1656.) Every year one warden represented Duffield and the other Windley, Makeney, Hazelwood or Holbrook in rotation. The parish's accounting year ran from Lady Day to Lady Day. Stephen Hipkin has noted that a number of the participants in the enclosure dispute in the Faversham Blean between 1595 and 1610 were churchwardens at various times. (Hipkin, "Sitting on his Penny Rent", p. 14.)

²⁶⁹ Bludworth was the churchwarden for Duffield township, his co-warden was William Lees, who represented Makeney. For another instance of a churchwarden participating in enclosure riots during his term of office (Roger How of Berkhamsted St Peter), see Falvey, 'Crown Policy', p. 135.

²⁷⁰ For the duties of churchwardens and their role in the early modern parish, see, for example, E. Carlson, 'The Origins, Function and Status of Churchwardens, with Particular Reference to the Diocese of Ely', in Margaret Spufford (ed.), *The World of Rural Dissenters, 1520-1725* (Cambridge, 1995), pp. 164-207; J. S. Craig, 'Co-operation and Initiatives: Elizabethan Churchwardens and the Parish Accounts of Mildenhall', *Social History*, 18 (1993), pp. 357-80.

²⁷¹ Hindle, 'Persuasion and Protest', pp. 71-72.

assisting the poor who exercised marginal use-rights but were defending their own common rights. To their cost, they knew that the unclosed forest actually attracted ‘lawless persons’.²⁷² Chiming with Hipkin’s findings, Walter has argued that any wealthy tenants who rioted were motivated more by commercial considerations than by compassion for their poorer neighbours.²⁷³

At Duffield the scale and nature of the problems posed by poor inhabitants in the 1640s are difficult to gauge.²⁷⁴ Over 170 people had made encroachments in the Frith during the preceding decades but, as we shall see, not all were necessarily poor migrants.²⁷⁵ Local attitudes towards the poor had certainly changed. In the 1580s ‘ancient cottagers’ claimed, and were permitted to exercise, use-rights in the Frith but in 1632 the signatories to the enclosure agreements requested that the duchy examine the title of all who claimed common in the Frith so that those who had no *legal* right could be barred.²⁷⁶ Since those rioters who had been signatories explained their *volte face* as opposition to the way in which the thirds had been allocated, and therefore to the nature of the ground allotted to the commoners, these men’s objections to the enclosure were commercial rather compassionate. Mellor and his confederates emphasised that the allotments provided insufficient common

²⁷² Hipkin, “‘Sitting on his Penny Rent’”, p. 23.

²⁷³ *Ex info.* John Walter, following his paper ‘Popular opposition to enclosure’, given at Oxford, 4 April 1998.

²⁷⁴ Analysis of the 1664L Hearth Tax returns demonstrates that 31 per cent of householders in Duffield, Belper, Heage, Holbrook, Shottle and Postern were assessed as ‘non-chargeable’; a much lower proportion than in the communities within the Forest of Arden. (D. G. Edwards (ed.), *Derbyshire Hearth Tax Assessments 1622-70* (Derbyshire Record Society, 7, Chesterfield, 1982), pp. 22-23; Victor Skipp, *Crisis and development: An ecological case study of the Forest of Arden 1570-1674* (Cambridge, 1978), p. 78.)

²⁷⁵ In 1659, three deponents stated that after the enclosure of Chevin ward they and several others were employed by the commoners as coal-miners to work the mines in the ward. Some of the miners may have lived in squatters’ cottages within the Frith but two of the deponents themselves came from Wirksworth. (TNA: PRO: E134/1659/East27, depositions of John Johnson of Long Bank in the parish of Wirksworth, collier; of Richard Street of Wirksworth, miner; and of Thomas Allen of Chevin ward, collier.)

²⁷⁶ TNA: PRO: DL44/1117, enclosure agreements for Belper, Chevin and Hulland wards. These investigations never took place and the two-thirds were not further divided amongst the legal commoners.

for those legally entitled but also raised the spectre of poverty throughout the area. Not only the commoners but also ‘many hundredths of the Inhabitantes’ of the surrounding towns would be ‘very much impoverished’ if the enclosures were re-erected. Whether this was a genuine expression of concern for their poorer neighbours or a rhetorical device to blackmail the duchy is, however, debatable.²⁷⁷

Even more influential in the neighbourhood than parish officers were the local gentry, ten of whom were named in Syddenham’s information.²⁷⁸ Two of them, John Bruckshaw of Broadholme and George Sellars, were actually seen participating in the riots but the extent of the involvement of the others remains unknown.²⁷⁹ Nevertheless, whether they actively destroyed the fences or simply encouraged their tenants to do so, their opposition to the enclosures was evidently public knowledge. Their motives, however, are less clear. Such men were not economically dependent on the Frith. They may have been attacking the aggressive activity of a neighbouring landlord on behalf of their tenantry; they may also have seen it as an opportunity to defy the crown.²⁸⁰ Edward Leech, in particular, used every opportunity to try to undermine the crown’s position at Duffield, not from

²⁷⁷ TNA: PRO: DL1/370, answer of Robert Mellor *et al.*.

²⁷⁸ The gentry identified by Syddenham were: John Bruckshaw of Broadholme; John Bruckshaw of Dalley; William Kniveton of Mugginton, gentleman; Sir Edward Leech, lord of the manor of Duffield and a Master in Chancery; Edward Lowe, esquire, lord of the manor of Alderwasley and owner of Colebrook ward; Edmund Merrie, gentleman; Thomas Needham, esquire; George Pole, esquire, of Heage; George Sellars of Belper, gentleman; and Luke Whittington, gentleman.

²⁷⁹ In 1647, John Bruckshaw was named by Syddenham, Robert Ballidon and John Edge as one of the leaders in the riots in Belper ward. He had been present at the Derby Assizes when the Lords’ orders were read out. (HLRO: HLMP, petitions of Edward Syddenham dated 4 February and 20 March 1647; affidavit of Robert Ballidon and John Edge, 18 March 1647.) George Sellars was one of the five rioters who presented an answer in the duchy court to Syddenham’s information in May 1642. (TNA: PRO: DL1/370, answer of Robert Mellor *et al.*)

²⁸⁰ For opposition from local manorial lords to the enclosure of Berkhamsted Frith in 1640 by the duchy of Cornwall, see Falvey, ‘Crown policy’, p. 146. As at Duffield, the motives of the earl of Bridgewater and Sir Thomas Hyde are far from clear.

political considerations but from desire to exploit the assets of the Frith as well as the manor, although he had no legal claim over the former.²⁸¹

iii. Poor cottagers and artisans?

Whilst it would be tempting to speculate that most of those alleged rioters who have not already been identified as manorial tenants were poor cottagers and artisans, it would be very difficult to prove this in the absence of early modern poor law records from Duffield parish; three other documents, however, do shed some light on this issue. Firstly, two mid-century lists identify some 177 people who had made encroachments in the Frith, most comprising a cottage and some land, anything up to thirty years previously.²⁸² These lists do not, however, necessarily refer to hastily erected squatters' cottages since some of the 'encroachments' belonged to Syddenham's legal tenants in the enclosures.²⁸³ Twenty of the 'encroachers' were alleged rioters but these included two churchwardens, six freehold tenants and several others who acted as appraisers in the 1640s. Such men comprised the better

²⁸¹ Although Leece's ownership of the manor did not extend to any part of the Frith, Henry Simpson, one of Leece's servants, claimed that Leece had leased him part of the enclosure in Hulland ward. When the legal tenant had removed Simpson's animals from the ward, Leece began a suit to try his (Leece's) title in the enclosure. (TNA: PRO: DL1/371 (unnumbered), answer of Henry Simpson to the information of Edward Syddenham, 9 July 1642.)

²⁸² TNA: PRO: DL4/99/10, deposition of Robert Smith of Duffield, weaver, 23 September 1641; TNA: PRO: E317/Derb/18, Commonwealth survey of the former crown lands in Duffield Frith, made July 1650. DL4/99/10 contains fifty-seven names and E317/Derb/18 contains 127; seven names are common to both lists. For the petition of a poor 'widow' concerning the destruction by the parish of her (illegal) cottage in Chevin ward, see J. Cox, *Three Centuries of Derbyshire Annals (as illustrated by the Records of the Quarter Sessions of the County of Derby, from Queen Elizabeth to Queen Victoria)* (2 volumes, London, 1890), 2, p. 173. (A counter-petition by Duffield overseers claimed that the woman was married.)

²⁸³ The Commonwealth surveyors included, for example, the property of Ralph Ault, comprising a house, barn and two acres valued as a whole at 20s a year; a property of Henry Gregson, comprising a stable and a barn valued together at 10s a year; and a property of 'Mr Smith', comprising a house and a barn valued together at 40s a year. (TNA: PRO: E317/Derb/18.)

sort of the local community.²⁸⁴ On the basis of the available evidence only seven of those accused of rioting can be tentatively identified as poor squatters.²⁸⁵

Secondly, alleged rioters who were not recorded in the muster roll for Appletree Hundred drawn up in December 1638, just three years before the riots occurred, might have been recent incomers or squatters.²⁸⁶ Thirty-six men apparently fit this category as neither their full names, nor even their surnames, were listed in the roll (see Appendix 7).²⁸⁷ Further analysis of the roll, however, suggests that it was not a complete list of male inhabitants between the ages of sixteen and sixty. Records of the duchy and manor courts indicate that ten of the thirty-six ‘missing’ men were legal commoners, six of whom were amongst the forty-seven commoners accused of failing to contribute towards legal costs relating to the enclosures.²⁸⁸ Of the remaining twenty-six, five can be placed within the

²⁸⁴ Thomas Stalman and Sampson Wollett were churchwardens in 1638/9 and 1640/42 respectively. (DRO: D2402 A/PI 1/1, Duffield parish register, 1598-1656.) William Beardsley, Thomas Brown, John Duffield, John Mellor, Robert Simpson and Thomas Smith were freehold tenants in 1644. (DRO: D1404/16, Duffield Court Book, ff. 65v-68r.) Thomas Milnes was a copyholder and one of the signatories to the enclosure agreements. John Hanson acted as an appraiser three times in the 1640s; his brother Richard, described as a yeoman, supervised their brother William’s will in 1641. Richard Pickard and Thomas Symes both acted as appraisers during the 1640s.

²⁸⁵ These men were Thomas Cadman, John Hall, George Norman, Richard Smith, Richard Steere, Godfrey Stopperd and Ralph Storer. This conclusion is only tentative because the annual value of their cottages ranged from 1s to 8s, suggesting that some at least may have been fairly substantial buildings. (TNA: PRO: E317/Derb/18.)

²⁸⁶ TNA: PRO: SP16/405, part 2, Muster roll for Appletree Hundred, compiled December 1638.

²⁸⁷ Other rioters do not appear in the roll but their place of residence has been identified from other documents. The returns for the neighbouring hundred of Morleston and Litchurch and for the Wapentake of Wirksworth have also been checked but no exact matches have been found, suggesting that the rioters were, in fact, local men from the immediate area of the Frith.

²⁸⁸ Some of these men may not have appeared on the muster roll because they were absentees, but they were certainly not squatters. The named rioters who do not appear in the muster roll but were legal commoners are Henry Bracey (freehold tenant in Biggin, 1644); Walter Buckland (unpaid legal costs, 1639), John Bullocke, esquire (freehold tenant in Duffield, 1644), James Cloves (unpaid legal costs, 1639); Richard Gibson (unpaid legal costs, 1639; freehold tenant and juror in Belper, 1644); Thomas Launder (unpaid legal costs, 1639), Thomas Needham, esquire (unpaid legal costs, 1639), Anthony Simpson (unpaid legal costs, 1639; freehold tenant and juror in Belper, 1644); Robert Simpson (freehold tenant in Belper, 1644), Thomas Stalman (churchwarden in 1638/9, copyhold land in Duffield). (TNA: PRO: DL5/33, f. 227v (unpaid legal costs); DRO: D1404/16, ff. 65v-68r (freeholders); TNA: PRO: DL1/370, answer of Robert Mellor *et al.*, regarding copyhold land of Thomas Stalman.)

community.²⁸⁹ The other twenty-one may have been illegal poor commoners. Two, Thomas Cadman and Richard Steere, have already been identified as squatters. Robert Broxsome and Edward Jobbitt only appear in other records relating to misdemeanours in the Frith.²⁹⁰ The remaining seventeen appear in no other records.²⁹¹ It is worth noting, however, that informers within the community were able to recognise these rioters. Syddenham did not accuse a faceless mob but numerous named individuals. These twenty-one men may have been ‘poor cottagers and miners’.²⁹² Although they had ‘no visible estate’, however, they themselves were neither invisible nor anonymous.

iv. Female rioters in the Frith

Only six women are known to have participated in the protests at Duffield: four who removed the markers in Hulland ward in 1633 and two named by Syddenham, the widows Ellen Robinson and Susanna Fletcher.²⁹³ Whilst it is likely that other women had helped destroy the fences in the 1640s – for example, some of the twenty poor widows known to be occupying encroachments in the Frith – only these two were identified.²⁹⁴ Ellen Robinson’s husband, Francis, had died in May 1633. He

²⁸⁹ The five men who are not listed in the muster roll but who appear in other records relating to the community are: Richard Brislerd (will & inventory dated 1673); Henry Palfreman (son-in-law of Robert Williamson, who died in 1639); Henry Simpson (servant of Sir Edward Leech, 1642); Solomon Wilkes (appraiser in 1647); Thomas Williamson (appraiser in 1642).

²⁹⁰ In July 1642 Robert Broxsome (or Broxstone) was accused of defying the duchy’s injunction. (TNA: PRO: DL5/34, f. 191r.) In 1647 Ralph Aulte accused Edward Jobbitt of being one of the leading rioters in Hulland ward in February 1642. (HLRO: HLMP, bundle dated 20 March 1647, affidavit of Ralph Aulte, 20 March 1647.)

²⁹¹ The remaining seventeen rioters who did not appear in the muster roll are Thomas Beardmore, Robert Boules, Robert Cawood, Richard Cowlislowe, William Deacon, John Hanly, Nicholas Hardie, Ralph Hardie, Francis Hawkisley, Thomas Heape, Richard King, William Litchfield, John Moseley, Thomas Palmer, Richard Pearce, Henry ?Peaould, Christopher Toule.

²⁹² i.e. precisely the sort of men whom Sharp assumed comprised the rioters at Duffield. (Sharp, *In Contempt of all Authority*, p. 223.)

²⁹³ At Whittlesey, no female rioters were identified by name.

²⁹⁴ The lists of encroachers are to be found in TNA: PRO: E317/Derb/18, Commonwealth survey of Duffield Frith, July 1650 and TNA: PRO: DL4/99/10, deposition of Robert Smith of Duffield, weaver, 23 September 1641.

had been a blacksmith in Belper but had also farmed on a modest scale.²⁹⁵ In addition to his wife, five of the seven witnesses and appraisers named in his will and inventory were alleged rioters.²⁹⁶ Although still a widow some nine years after her husband's death, she was not dependent on the Frith for survival as she had been bequeathed his leasehold land. That land's resources would, however, have been supplemented with grazing in the Frith; loss of access would have reduced her income. Susanna Fletcher's husband, Richard, of Bradley Laund near Belper, had died in February 1638. Described as a yeoman, his inventory shows that he had not only been a wealthy farmer but also a prosperous blacksmith.²⁹⁷ Unstinted grazing in the Frith would have contributed considerably to his farming profits.²⁹⁸ In addition to his wife, seven other alleged rioters, including George Sellars, his father-in-law, featured in his will and inventory.²⁹⁹ Susanna, then, was no poor widow, forced by circumstances to eke out a living from the Frith but the widow of a prosperous blacksmith and daughter of a gentleman; she was also the mother of one of Syddenham's 'chief leaders and incendiaries'. Both of these widows, who were by no means poor, belonged to a network within the community at Belper, a network that pulled together in both personal and communal times of adversity.

²⁹⁵ LRO: B/C/11, will and inventory of Francis Robinson of Belper, blacksmith (will dated 12 April 1633; inventory dated 7 May 1633; probated granted 3 June 1633). Robinson had no stocks of wrought goods or raw materials; no debts owed to or by; his smith's tools were valued at just over £2. His livestock and grain were valued at just over £45, and included sixty-two sheep and twelve cattle.

²⁹⁶ Robinson's son William (executor, witness and appraiser), John Bullock (witness and executor), Richard Clarke and Thomas Bott (or Bolt) (witnesses) and Thomas Meacock (appraiser).

²⁹⁷ LRO: B/C/11, inventory of Richard Fletcher of Bradley Laund, yeoman (appraised 1 February 1638). The inventory was valued at £607 6s 1d. He had nearly £80-worth of animals (forty-two sheep, nineteen cattle and seven horses) and over £30-worth of grain. As well three pairs of bellows and three anvils, he possessed over 1000 scythes, 300 shearing hooks and £10-worth of steel bars. He had debts owing of over £300 and owed just over £70 himself, mostly for iron and steel.

²⁹⁸ Research by both Pauline Frost and David Hey has revealed that many metal-workers also practised farming. (P. Frost, 'Yeomen and metalsmiths: livestock in the dual economy in south Staffordshire, 1560-1720', *Agricultural History Review*, 29 (1981), pp. 29-41; D. G. Hey, 'A dual economy in south Yorkshire', *Agricultural History Review*, 17 (1969), pp. 108-19; David Hey, *The Rural Metalworkers of the Sheffield Region: A Study of Rural Industry before the Industrial Revolution* (Leicester, 1972), *passim*.)

²⁹⁹ Fletcher's sons William and Richard (cited as one of the leaders in Belper ward), Anthony Bradshaw (witness), John Litchfield, John Bullock and Thomas Meacock (appraisers) and George Sellars (joint executor with Susanna).

v. Protesters in probate documents

Nothing would have been known of Susanna Fletcher and Ellen Robinson had their husbands' probate documents not survived. Such documents, by their very nature, disclose relationships between individuals within a community: not only kin but also friends and neighbours, and sometimes debtors and creditors (see Appendix 7). Restrictions of space do not permit a full analysis but the following brief study will serve as an example. The wills and inventories of twenty-three Duffield parishioners survive from the period 1642 to 1650.³⁰⁰ Of these, eight sets of documents probably relate to alleged rioters and each of these contains references to others who can be identified as 'rioters'.³⁰¹ Three reveal a network of association within Heage and also suggest a further explanation for the opposition of these particular men to the enclosure. The inventories of the husbandmen John Rowme, Thomas Adyn and Edward Ridge were each appraised by four men including Ellis Cotes of Heage, a rioter.³⁰² In the cases of Rowme and Ridge two more appraisers, William Malyn and John Hanson, were also protesters. Although not required to list debts owed by the deceased, these appraisers did: Ridge owed half the value of his inventory, Adyn the

³⁰⁰ An exhaustive search of the probate material at Lichfield was carried out. Frustratingly no wills survive from Duffield parish for the year 1643 to 1646 and only one from 1650; no wills survive at Lichfield for the period 1651-1660. Twenty-five Duffield wills were proved in the Prerogative Court of Canterbury between 1650 and 1660; few of them are informative. One is the will of Robert Mellor, yeoman, of Idridgehay. This is not the leading rioter: the land holding and family relationships are different. (TNA: PRO: PROB11/277/126r-127v, will of Robert Mellor alias Storer, yeoman, of Idridgehay (will dated 9 April 1658, probate granted 28 June 1658).)

³⁰¹ The scythe-grinder William Johnson has already been ruled out. The surviving rioters' documents are: LRO: B/C/11, inventory of John Rowme of Heage, husbandman (appraised 10 August 1643, probate granted 18 December 1646); inventory of Thomas Adyn of Heage (appraised 25 December 1643, probate granted 28 May 1647); will of William Everatt of Hazelwood, yeoman (probate granted 28 May 1647); will of Thomas Webster, tanner (probate granted 8 October 1647); will and inventory of Thomas Willott (nuncupative will dated 17 March 1642, inventory dated 7 March 1643, probate granted 8 October 1647); letters of administration for the goods of John Stanley of Duffield, yeoman (probate granted 22 January 1648); nuncupative will of William Bee of Belper, nailer (probate granted 8 May 1649); inventory of Edward Ridge of Heage (appraised 28 December 1644, probate granted 18 December 1649).

³⁰² Although only Rowme was specifically described as a husbandman, it is clear from their inventoried goods that the other two were also husbandmen.

full value and Rowme double.³⁰³ Perhaps the enclosure had gravely affected their farms, for they had certainly been borrowing heavily when they died.

vi. The rioting crowd

As Syddenham had intentionally identified legal commoners as rioters in order to fulfil the logic of his case, it is hardly surprising that documentary evidence confirms that many of the rioters were tenants or owners of properties with common rights attached. This is not to say that poor inhabitants did not participate. Indeed it would scarcely be credible if they had not, although the evidence presented to the Duchy Court does not admit it. Whilst the scenario in the Frith assumed by Sharp might seem logical, detailed analysis demonstrates that husbandmen, yeomen and even gentry took part in the destruction of the enclosure fences in 1642.

Few of those who participated in the subsequent riots that took place later in 1642, in 1643 and in 1645 were ever named. In 1647, in two different petitions, Syddenham named fourteen men whom he believed had been the ‘cheife Leaders & Indendiaries’ (see Appendices 7 and 8).³⁰⁴ This second list of rioters was derived from the evidence presented in four affidavits, evidence that had been compiled in the hope of bringing the leaders to justice.³⁰⁵ The witnesses all referred to ‘many

³⁰³ The details are: Edward Ridge, inventory total £22 4s, debts owed £10 11s 8d; Thomas Adyn, inventory total £23 10s, debts owed £24 10s; John Rowme, inventory total £43 9s; debts owed £96.

³⁰⁴ The names appeared in appended to two petitions that Syddenham presented to the House of Lords. (HLRO: HLMP, bundle dated 4 February 1647, petition of Sir Edward Syddenham, 4 February 1647; HLRO: HLMP, bundle dated 20 March 1647, petition of Sir Edward Syddenham, 20 March 1647.) Those named on 4 February (in order) were Robert Mellor, John Storer, Robert Webster, Richard Durden, William Johnson, Thomas Everatt, William Bludworth, John Stables, John Bruckshaw, William Taylor, Henry Bradshaw and Richard Fletcher. Those named on 20 March were Robert Mellor, John Storer, Robert Webster, Richard Durden and Richard Haulkins (Hulland ward); William Johnson, William Bludworth and Thomas Boulton (Chevin ward); and John Bruckshaw, William Taylor, Henry Bradshaw and Richard Fletcher (Belper ward). (Richard Haulkins and Thomas Boulton replaced Thomas Everatt and John Stables.)

³⁰⁵ The witnesses gave three names not mentioned in 1642: Richard Haulkins, Henry Bradshaw and William Taylor. Ralph Aulte identified four others, Thomas Milnes, Richard Pickard, Thomas Brown and Edward Jobitt, who had destroyed the fences in the spring of 1642 but, for whatever reason,

others' who had also destroyed the enclosures but did not, or could not, name them. Syddenham, having previously failed curb the activities of the many, now decided to concentrate on the few. Nearly all of the fourteen were substantial men within the community: eight were freehold tenants in 1644; two of these freeholders and one other had been churchwardens; only two of the fourteen do not appear in any other records.³⁰⁶ As Syddenham was seeking compensation for the financial loss that he had incurred as a result of the rioting it is scarcely surprising that those whom he accused were men of means.³⁰⁷ Again, although poor cottagers and squatters undoubtedly took part in the destruction, it was not in Syddenham's interest to pursue such people through the courts.³⁰⁸

In this study, as in all historical investigations, the nature of the sources has dictated the direction of the analysis. Although the purpose of Syddenham's two suits differed, the evidence that he offered was similar. In each suit he produced a list, albeit one much longer than the other, naming mostly those of the better sort of the community who had participated in the destruction in the Frith. Some of the poorer inhabitants who assisted these men have been tentatively identified; the others who undoubtedly participated remain anonymous within the rioting crowd. At Duffield,

Sydddenham did not name them in his petitions to the Lords, although he had identified them in May 1642. (HLRO: HLMP, bundle dated 20 March 1647, affidavit of Ralph Aulte.)

³⁰⁶ Richard Haulkins (or, Hawkins) and William Taylor do not appear in any other records. The freehold tenants were Robert Mellor, John Storer, Robert Webster, William Johnson, William Bludworth, John Stables, John Bruckshaw and Richard Fletcher; Thomas Everatt had been churchwarden, as had Bludworth and Stables.

³⁰⁷ In June 1647 the deputy to the Gentleman Usher of the House petitioned the Lords to order the Duffield men to pay the expenses that he had incurred when taking them to London and keeping them in custody for three months. He argued that they should be compelled to pay, 'they being able men'. (HLRO: HLMP, petition of Michael Baker, 3 June 1647.) The petition was rejected.

³⁰⁸ In 1659 deponents named thirteen men who had participated in the riots, seven of whom had been named by Syddenham in 1642: John Alton, John Duffield, George Gratian, Robert Mellor, John Storer, John Stables and Richard Walker. The other six, John Beardsley, George Bellane, John Gracian, Simon Rachdale, [blank] Wallis and Thomas Yeomans, cannot be traced in any earlier records. (TNA: PRO: E134/1659/East27, 28 March 1659, depositions of John Alton (identified by Syddenham as a rioter), Robert Ballington (the same person as Robert Ballidon who provided an affidavit in 1647), John Burgine, Edward Smedley and William Winson.)

however, this was not necessarily because no-one recognised them, but because the legal arguments put forward by Syddenham would not have been advanced by identifying illegal commoners, that is, poor rioters. Had the duchy or the local justices investigated the disturbances, or had the Star Chamber still been functioning, very different lists of rioters may well have been produced.

Part 4: Possession and repossession of the Frith

Although Duffield lay in the mid-Derbyshire countryside, some 130 miles from Westminster, the commoners' prolonged struggle over access to the Frith frequently brought them into conflict with the crown's representatives and lawyers. In their articulate defence of highly localised rights, the commoners were neither intimidated by such opponents nor unaware of the political arena in which they fought. Furthermore, the commoners took advantage of the 'tumultuous times' to repossess by force land that they considered to be rightfully theirs.³⁰⁹ We should, therefore, briefly consider the impact of the civil war on the manor and parish.

i. The civil war in Derbyshire

Although no large-scale military operations or battles took place in Derbyshire, its location was important strategically.³¹⁰ To its north, west and south lay Yorkshire and Northumberland, Wales and Oxford respectively, all areas of strong royalist support. For the parliamentarians, therefore, it was vital to safeguard the crossings of the River Trent in Derbyshire. From the outset the county was a parliamentary stronghold, largely due to the efforts of Sir John Gell, commander-in-chief of

³⁰⁹ A decree issued by the Duchy in 1662 stated that the commoners had destroyed the fences in the Frith during the 'late Tumultuous tymes'. (TNA: PRO: DL5/36, f. 198r, 21 November 1662.) Interestingly, in 1650 the commonwealth commissioners charged with selling former crown lands noted that 'distraccion by the late Warres' had prevented the Duffield commoners obtaining a legal reversal of the enclosure decree, emphasising the disruption caused to the legal system by the wars. (TNA: PRO: E317/Derb/18, returned 19 August 1650.)

³¹⁰ The following account is based on Brian Stone's synthesis of the events of the war. (Brian Stone, *Derbyshire in the Civil War* (Cromford, 1992).) See also Martyn Bennett, ' "My plundered townes, my houses devastation": the civil war and North Midlands life', *Midland History*, 22 (1997), pp. 35-50; Stephen Glover, *History of the County of Derby*, ed. Thomas Neale (2 volumes, Derby, 1829), 1, Appendix 14; R. Sherwood, *The Civil War in the Midlands 1642-1651* (2nd edition, Stroud, 1992); G. Turbutt, *A History of Derbyshire*, (4 volumes, Cardiff, 1999), 3, *Tudor, Stuart and Georgian Derbyshire*, pp. 1051-89; Wood, *The Politics of Social Conflict*, pp. 274-76.

parliament's forces in Derbyshire, Staffordshire and Warwickshire, whose residence at Hopton Hall lay some six miles north-west of Belper.³¹¹

Inhabitants of Duffield cannot have been completely unaware of the various military engagements that occurred in the region. In October 1642, for example, Gell marched soldiers from Chesterfield to Wirksworth, where he raised 200 men from his own estates. They then marched to Derby, which they occupied for parliament, creating a garrison there, just four miles south of Duffield village.³¹² Some twelve miles to the south-west of Duffield stood the royalist stronghold of Tutbury castle. In July 1643 parliamentary troops besieged that castle but then retreated, having received (false) intelligence that the earl of Newcastle was about to relieve it.³¹³ On several occasions in 1642 and 1643, Edward Lowe's manor house at Alderwasley, four miles north of Belper, was attacked by parliamentary troops.³¹⁴ In November 1643, the earl of Newcastle and some of his troops occupied Chesterfield; consequently, in late November and early December, there occurred some of the most severe and protracted fighting in the county.³¹⁵ Royalists attacked Wingfield manor, eight miles north-east of Belper, on the road from Chesterfield to Derby.³¹⁶ There was fighting at Ashbourne, four miles west of Hulland. Forward elements of Newcastle's troops encountered some parliamentarians at Kilburn, four miles south-east of Belper. Eventually the royalists forced the parliamentary troops

³¹¹ Trevor Brighton, 'Gell, Sir John, first baronet (*bap.* 1593, *d.* 1671)', *ODNB*. Some of Gell's lands entitled him to common in Belper and Hulland wards; in 1632, he signed the enclosure agreements for those two wards. (TNA: PRO: DL44/1117.) For Gell's position as a lessee of Derbyshire lead mines, see Wood, *The Politics of Social Conflict*, *passim*, especially pp. 232-37, 271-76.

³¹² Stone, *Derbyshire in the Civil War*, p. 23. The route from Wirksworth to Derby passes directly through the parish of Duffield.

³¹³ Stone, *Derbyshire in the Civil War*, p. 45.

³¹⁴ Turbutt, *Tudor, Stuart and Georgian Derbyshire*, p. 1057.

³¹⁵ Stone, *Derbyshire in the Civil War*, p. 50.

³¹⁶ In *Mercurius Aulicus* it was reported that 'this house, which through its strength and situation, standing in the middle way between Derby and Chesterfield, will be very advantageous to his Majesty's affairs'. (Quoted in Margaret Cavendish, *The Life of William Cavendish, Duke of Newcastle*, ed. C. H. Firth (London, 1910), p. 32, n. 1.)

throughout the county to retreat to Derby, but, although, according to one of Gell's supporters, 'the enemy pillaged very neare Derby', Newcastle failed to press home his advantage.³¹⁷ In February 1644, at Ashbourne, parliamentarian troops routed another royalist force, taking 170 prisoners. Although not the locus of any of this fighting, Duffield was, nevertheless, close by and its inhabitants counted the cost of the wars.

In February 1643, parliament issued an ordinance levying a weekly assessment. Counties were required to pay a fixed amount that local assessors divided between all householders.³¹⁸ From July 1643 an excise duty was levied both on luxury goods and basic essentials.³¹⁹ Locally the burden of collecting such monies lay on constables, whose accounts portray vividly the impositions of war on local communities.³²⁰ The constables of Upton, near Southwell (Nottinghamshire), for example, recorded costs incurred gathering and arming the trained bands; assessments for supplies for the royalist garrison four miles away at Newark; lists of substantial householders who billeted soldiers; payments made to wounded soldiers passing through; charges incurred supplying villagers to labour on the bulwarks of Newark.³²¹ No constables' accounts have survived from Duffield, but given that there was a parliamentarian garrison at Derby and a royalist one at Tutbury, it is

³¹⁷ Sir George Gresley, 'A true account of the raying and imployeing of one foote regiment under Sir John Gell from the beginning of October, 1642', reproduced in Stone, *Derbyshire in the Civil War*, p. 150. In mid-January 1644, Newcastle and his troops had to leave Derbyshire quickly to assist against the Scots' invasion of England.

³¹⁸ Stone, *Derbyshire in the Civil War*, p. 90. Derbyshire was assessed at £175 per week. The methods by which the revenue was raised, collected and disbursed by county committees is described in Morrill, *The Revolt of the Provinces*, pp. 56-57. Other taxes were also raised by county committees, such as 'the fifth and twentieth part', a compulsory levy from all who had refused to lend voluntarily to Parliament. Tenants of sequestered royalist manors had to pay their rents to the committees.

³¹⁹ Morrill, *The Revolt of the Provinces*, document 14a is an extract from the Excise Ordinance, 22 July 1643.

³²⁰ For a letter from the Derbyshire County Committee requesting the constable of Hope to summon householders to a meeting to make their payments, see Stone, *Derbyshire in the Civil War*, p. 92.

³²¹ Martyn Bennett (ed.), *A Nottinghamshire Village in War and Peace: The Accounts of the Constables of Upton 1640-1666* (Thoroton Society Record Series, 39, Nottingham, 1995), pp. xix-xxvi.

likely that the wartime experiences and expenses of Duffield inhabitants were not dissimilar to those of Upton.³²²

From 1642 onwards, therefore, soldiers were not an unaccustomed sight in the Duffield region; indeed, in 1659, two local men connected the presence of soldiers with the destruction of the enclosures in the Frith during the 1640s. Richard Street, a coal-miner in Chevin ward, claimed that the enclosures had been ‘quietlie enioyed [by Syddenham and his sub-tenants] untill the goinge of Souldiers into Scotland’.³²³ Whether this reference was merely a convenient marker of memory for the chronology of destruction, or a rather more politically-charged implication that the soldiers themselves were responsible for levelling the fences, it nonetheless demonstrates Street’s awareness of the wars.³²⁴ Vicesimus Bradshaw, on the other hand, was less equivocal: he stated that part of the fencing had been ‘pulled downe by souldiers at the begininge of the late warrs’ and that the rest was destroyed later by persons unknown, under cover of darkness.³²⁵ As a resident gentleman and leading landholder in the manor, he must have known the identities of some of the rioters; but he also knew that soldiers, ever notorious for pillaging the countryside,

³²² The cost was not only monetary but also human: local men were recruited into both armies. For example, John Brocklehurst of Alderwasley, having been incapacitated by injuries sustained fighting for the royalists, later petitioned the Derbyshire bench for a pension. (Stone, *Derbyshire in the Civil War*, p. 98, quoting DRO: QSB645.)

³²³ TNA: PRO: E134/1659/East27, deposition of Richard Street of Wirksworth, coal-miner in Chevin ward, presumably referring to soldiers recruited for the Bishops’ Wars.

³²⁴ If Street was actually implying that fence-breaking was to be blamed on the soldiers, this comment is scarcely credible given the surviving evidence. He may, however, have been remembering the destruction of enclosure fences near Melbourne, twelve miles south of Duffield, by locally-recruited soldiers in 1640. (HMC, *Manuscripts of Earl Cowper*, 2, pp. 256-59, letter from Sir John Coke the younger to Thomas Coke, 29 June 1640.) Similarly, soldiers destroyed enclosure fences in Uttoxeter ward of Needwood Forest, some sixteen miles south-west of Duffield, in 1639 and again in 1640. (Sharp, *In Contempt of All Authority*, pp. 221-22). For a discussion of the rioting soldiers at both Melbourne and Needwood, see M. C. Fissel, *The Bishops’ Wars: Charles I’s campaigns against Scotland, 1638–1640* (Cambridge, 1994), pp. 275-77.

³²⁵ TNA: PRO: E134/1659/East27, deposition of Vicesimus Bradshaw of Makency, gentleman. Bradshaw was the twentieth child of Anthony Bradshaw (hence his forename) and, in 1632, had signed the enclosure agreement for Chevin ward. (TNA: PRO: DL44/1117.) Presumably Bradshaw was referring to the presence of troops in the area during the civil war skirmishes referred to above.

had been crossing and re-crossing the district. Rather than identify his neighbours, he blamed soldiers for the initial destruction.³²⁶

ii. Commoners and the parliamentary commissioners

After the wars the Commonwealth regime was anxious to restore order within the country as a whole. The royalists and their newsbook propagandists had, after all, successfully portrayed the parliamentarians as the ‘party of rebellion’ and to govern successfully the regime needed to gain the support of the ‘traditional political classes’.³²⁷ During the 1650s troops were frequently garrisoned in areas where unrest occurred.³²⁸ In many regions, however, peace enabled landlords to reconstruct enclosures that had been destroyed during the 1640s.³²⁹ At the same time a ‘discourse of improvement’ gained support amongst the gentry and richer farmers.³³⁰ Opportunities for them to put theory into practice came when, needing to make provision for military back-pay, parliament decided to break up and sell off the estates of the crown, the church and prominent royalist families. In 1649 it passed an

³²⁶ In August 1640 at Berkhamsted, some soldiers *had* assisted the commoners when they destroyed the new enclosures there. (HALS: AH2794, note 21, notes made from seventeenth-century documents for the case of Augustus Smith *versus* Earl Brownlow, 1866.) (The original documents from the 1640s are now missing.)

³²⁷ For newsbooks and propaganda, see, for example, Joad Raymond, *The invention of the newspaper: English newsbooks, 1641-1649* (Oxford, 1996); Joad Raymond (ed.), *News, newspapers, and society in early modern Britain* (London, 1999); Joad Raymond, *Pamphlets and pamphleteering in early modern Britain* (Cambridge, 2003); David Norbrook, *Writing the English Republic: Poetry, Rhetoric and Politics, 1627-1660* (Cambridge, 1999). The quotations are from Wood, *Riot, Rebellion and Popular Politics*, p. 91.

³²⁸ Lindley states that in the fenlands ‘the combined weight of military and governmental support in the 1650s ensured that undertakers in the Great Level, after an initial trial of strength, gained the upper hand’. (Lindley, *Fenland Riots*, p. 161.)

³²⁹ In numerous petitions presented to the House of Lords and informations presented in other courts of law, landlords complained that commoners had destroyed their enclosures in the late ‘tumultuous times’, inferring that such acts could not have been committed if law and order had not broken down. See, for example, TNA: PRO: DL5/36, ff. 198r-98v, 21 November 1662, when it was reported that some of the Duffield commoners, ‘in the late Tumultuous tymes, interrupted his Maiesties Patentee in his possession’.

³³⁰ See, for example, Margaret James, *Social Problems and Policy during the Puritan Revolution 1640-1660* (London, 1930), pp. 106-30; A. McRae, *God Speed the Plough: The Representation of Agrarian England, 1500-1660* (Cambridge, 1996), Part II, ‘Imperatives of Improvement’, *passim*; Joan Thirsk, ‘Agricultural policy: public debate and legislation’, in Joan Thirsk (ed.), *AHEW*, 5, part 2, 1640-1750: *Agrarian Change* (Cambridge, 1985), pp. 298-405, especially pp. 372-88.

act for the sale of crown lands, which, amongst other things, ordered detailed surveys and valuations of all former crown lands prior to their sale.³³¹

In accordance with this act, in July 1650 a survey of Duffield Frith was produced, following consultation with a local jury comprising men of 'qualitye & sufficient abiliyes in those Partes & Neighbours to the Place'.³³² The parliamentary commissioners reported that 'severall Townes adjacent to Duffield Frith aforesaid have right of Common in & *throughout* the same lands'.³³³ The jurors had convinced them that the inhabitants had been compelled by 'force & terror' to agree to the enclosures and that, 'had not the distraccion by the late Warres prevented them', the commoners would have brought a legal action to reverse the enclosure decree that had allegedly been made without their consent. According to the commissioners, the destruction of the fences was fully justified 'considering the great wrong done to the Commoners'. They concluded that since 'the same is layd open & in Common againe' the future of the Frith should be given careful consideration. Their dilemma was clear: if they endorsed the sale of the Frith, the inhabitants who had fought successfully against high-handed crown policy would, once again, be dispossessed; if they did not, an opportunity to raise much needed revenue would be missed. No sale took place, neither were the fences re-erected: like the Lords before them, the commissioners endorsed the claims of the commoners. For the time being at least, the commoners had triumphed. At this point Syddenham, who had compounded for

³³¹ For the text of the 'Act for sale of the Honors, Manors, Lands heretofore belonging to the late King, Queen and Prince', see C. H. Firth and R. S. Rait (eds), *Acts and Ordinances of the Interregnum 1642-1660* (3 volumes, London, 1911), 2, pp. 168-91. For a detailed study of the administrative aspects of the act, see S. J. Madge, *The Domesday of Crown Lands; a study of the legislation, survey and sales of royal estates under the commonwealth* (London, 1938). For a study of the sales and the identity of the purchasers of crown lands under the act, see Ian Gentles, 'The Sales of Crown Lands during the English Revolution', *Economic History Review*, 26 (1973), pp. 614-35.

³³² TNA: PRO: E317/Derb/18, 'A Survey of the Royaltie of the late disforrested Forrest or Chase called Duffield Frith', returned 19 August 1650. (TNA: PRO: DL32/4 is an exact copy.)

³³³ Emphasis added.

his delinquency and so had, theoretically at least, been reinstated in his lands, decided to cut his losses by selling his interest in the Frith.³³⁴

In November 1633, Syddenham had leased from the crown just over 1,350 acres in Duffield Frith for a 'payment' of £2,195 7s 6d and an annual reserved rent of 40s.³³⁵ As his lands in the wards were 'verie barren and unfruitfull', to render them more profitable, whether for cultivation or grazing, he and his sub-tenants had spent considerable sums of money on 'manuringe lyminge husbandinge and Subdividinge'.³³⁶ In 1647 he claimed that the rioters had caused some £4,000-worth of damage to fences, hedges, walls, woods, houses and barns on his thirds.³³⁷ His enormous investment had resulted in huge net losses; added to which he had become embroiled in expensive lawsuits against recalcitrant commoners. Selling his interest in the thirds, by now a mill-stone round his neck, was an appealing solution; nevertheless, he must have been amazed when two of Cromwell's army officers offered to relieve him of it.

³³⁴ The records of the Committee for Compounding show that, on 30 April 1646, 'Sir Edward Sydenham of Giddy Hall, Essex,' had presented a petition to compound but they do not show when he actually compounded. (Everett Green (ed.), *Committee for Compounding etc*, 2, p. 1257.) However, sometime before 15 February 1651, 'Sir Edward Sydenham being a Delinquent Compounded amongst the rest of this Estate for the sayd Third parte of the sayd three Wardes' and so was in a position to sell his interest in the thirds. (TNA: PRO: DL41/608/35, report concerning Duffield Frith compiled by Bartholomew Hall, Attorney General to the Duchy of Lancaster, early May 1651.)

³³⁵ TNA: PRO: DL12/31/86, 31 August 1634. As we have already seen, Syddenham did not actually pay the £2,195 7s 6d because the king already owed him nearly £2,000 and the latter, effectively, gave him the lands in the Frith to repay the debt. The acreages in the 'thirds' in each of the wards were: 561 in Belper ward, 300 in Chevin ward and 490 in Hulland ward. (TNA: PRO: DL5/31 ff. 446r-47v.)

³³⁶ TNA: PRO: E134/1659/East27, deposition of Vicesimus Bradshaw of Makeney, gentleman, 28 March 1659.

³³⁷ HLRO: HLMP, bundles dated 4 February and 20 March 1647, petition of 'Sir Edward Sidenham', 4 February 1647; petition of 'Sir Edward Sidenham', 20 March 1647. In the latter someone had altered '£4,000' to '£5,000'.

iii. Commoners *versus* Fleetwood and Cooke

On 15 February 1651, Lieutenant-General Charles Fleetwood and Colonel Edward Cooke purchased the 'king's thirds' from Edward Syddenham.³³⁸ In the absence of any unequivocal record of the price that they paid, it is impossible to know how much of his outlay Syddenham was able to recoup.³³⁹ Since, presumably, Fleetwood and Cooke expected to make a profit from the property that they were purchasing, they must have been unaware of its history; certainly neither were local men.³⁴⁰ At a time when the property-market was flooded with lands formerly belonging to the crown and disgraced royalists, it is scarcely credible that these men would knowingly acquire land that had been not only badly damaged but also repossessed by commoners. The true position, however, soon came to light.

In May 1651 the new owners were forced to commence an action in the duchy court to establish the legality of their possession. The matter dragged on for years, during which time Fleetwood and Cooke also encountered, like Syddenham

³³⁸ TNA: PRO: DL41/608/35, report by Bartholomew Hall. Hall's report was recorded in the Duchy Court's Decree and Order book on 9 May 1651. (TNA: PRO: DL5/35, f. 58r.) Fleetwood and Cooke certainly *did not* purchase the whole of the Frith under the terms of the 1649 act for the sale of crown lands. Although many army officers did indeed purchase former crown lands under the act, it is clear from Hall's report that Fleetwood and Cooke had *only* purchased the 'king's thirds' in the Frith and that they had purchased them from Syddenham, not the administrators of the former crown lands. Fleetwood did, however, purchase under the terms of the act, the manors of Woodstock (Oxfordshire) and Methwold Warren (Norfolk) for nearly £18,000. (Gentles, 'The Sales of Crown Lands', p. 629.)

³³⁹ Hall's report gives the date of the purchase but not the price. (TNA: PRO: DL41/608/35.) Records relating to the ownership of the Frith in the 1650s and 1660s are somewhat contradictory. By 1660, William Smith and John Hele were co-owners of the thirds. One document, written in 1674, states that, on 20 March 1657, Smith and Hele had purchased the thirds for £2,500 *from Sir Edward Syddenham* and that Fleetwood and Cooke had simply been holding the lands in trust for him. (BL: Add MS 6691, f. 50.) All other documents, however, state that Fleetwood and Cooke had purchased the thirds and that *they* had sold them to Smith and Hele. Although it is unclear who actually paid £2,500 for the lands and when this was paid, the selling price, if not the actual value of the thirds, *had* increased.

³⁴⁰ I have not been able to trace Edward Cooke. Charles Fleetwood was the younger son of a Northamptonshire gentleman but had fought for parliament throughout the first civil war. In February 1651 the Rump Parliament elected him to the council of state. He was later major-general for East Anglia, Buckinghamshire, Hertfordshire and Oxfordshire. He acted as Lord-Deputy for Ireland in the early 1650s and married Bridget Cromwell, the Protector's daughter. (Toby Barnard, 'Fleetwood, Charles, appointed Lord Fleetwood under the protectorate (c.1618–1692)', *ODNB*; Christopher Durston, *Cromwell's major-generals: Godly government during the English Revolution* (Manchester, 2001), pp. 38–39.)

before them, official leniency towards the rioters.³⁴¹ Like the Lords in 1647 and the parliamentary commissioners in 1650, the duchy court proved reluctant to condemn outright the commoners' activities and, as we have already seen, the latter were only too willing and able to use the legal system to their advantage. On 9 May 1651 the court awarded an injunction for quieting Fleetwood and Cooke's possession.³⁴² The commoners, however, again led by Robert Mellor, argued that since they had actually been in possession for the previous nine or ten years, such an injunction would alter rather than quieten possession.³⁴³ Having considered the validity of the commoners' argument, the court withdrew the injunction and ordered that commissioners should investigate the matter by examining witnesses.³⁴⁴

Sometime after June 1652 a commission met at Ashbourne to settle the matter between the two parties.³⁴⁵ Although some of the commissioners came from the Duffield area, such as Francis Hudson of Postern Lodge and Thomas Thacker of Heage, they were headed by Commissary-General Edward Whalley.³⁴⁶ When, in the later 1650s, Whalley was appointed major-general with responsibility for the east

³⁴¹ The legal wrangling between Fleetwood and Cooke and the commoners can be traced through the duchy's Decree and Order book. (TNA: PRO: DL5/35, ff. 54r, 58r, 71v, 73r-73v, 86v-87r, 95r, 96r, 106r, 119r, 126r, 189v, 366v.)

³⁴² TNA: PRO: DL5/35, f. 58r, order dated 9 May 1651. All entries relating to the matter have the heading 'In a Cause heretofore depending in this Court betweene the late King by Information of the Attourney Generall of the Duchy plaintiff and William Earle of Newcastle & otheres Defendantes', signifying that the events being investigated stem from the original suit in 1633 that ratified the enclosures. (TNA: PRO: DL5/31, f. 452r, 7 November 1633.)

³⁴³ TNA: PRO: DL5/35, f. 73r, 13 June 1651.

³⁴⁴ TNA: PRO: DL5/35, ff. 73r-73v (13 June 1651); ff. 86v-87r (23 June 1651); f. 95r (3 July 1651); f. 106r (24 November 1651); f. 119r (28 November 1651); f. 126r (2 December 1651); f. 189v (30 June 1652).

³⁴⁵ The only record of the commission is to be found in the interrogatories and depositions made during Fleetwood and Cooke's suit in the Exchequer (TNA: PRO: E134/1659/East27) and in an information presented by the duke of Newcastle *et al.* in May 1665 (TNA: PRO: DL1/410, (unnumbered).)

³⁴⁶ TNA: PRO: DL1/410, information of duke of Newcastle *et al.*; TNA: PRO: E134/1659/East27, depositions of Francis Hudson of Postern Lodge, yeoman, and Thomas Thacker of Heage, gentleman. Although the date of the commission is unknown, it must have been before autumn 1655 when Whalley was appointed major-general, because in the commission he is referred to as 'Commissary Generall Whalley'.

Midland area, he became known for his 'singuler justice, abilitie and piety'.³⁴⁷ Mr George Pole, Gervase Rayner and Mr Thomas Newton acted as spokesmen for the 200 or more Duffield commoners who gathered at Ashbourne.³⁴⁸ Having heard depositions for both sides and visited the disputed lands, Whalley and the other commissioners ruled that the 'king's thirds' should again be separated from the other two-thirds and given to Mr Joseph Ward, representative for Fleetwood and Cooke. Pole, Rayner and Newton subsequently rented the thirds on a short-term lease on behalf of the commoners.³⁴⁹ Since the records of Whalley's commission have not survived, it is impossible to know exactly what was agreed, much less why the commoners had apparently capitulated. Perhaps some of the better sort were concerned about the number of squatters encroaching in the wards and wanted to be able to regulate 'the king's thirds' in an 'official' capacity as lessees.³⁵⁰ Or, perhaps the continuing cost of the battle for the thirds, in both time and money, had persuaded them that the outlay for a lease was a cheaper option.

Soon after this, however, the duchy court was dissolved by the Commonwealth regime. The commoners, ever well-informed of national events and their legal implications, therefore argued that they were no longer bound by the

³⁴⁷ Christopher Durston, 'Whalley, Edward, appointed Lord Whalley under the protectorate (d. 1674/5)', *ODNB*. The quotation is from Bod. Lib. MS Rawl. A 34, f. 767. For Whalley's later stance against depopulating enclosure see Durston, *Cromwell's major-generals*, pp. 170-71. See also Thomas Birch (ed.), *A Collection of the State Papers of John Thurloe, Esq; Secretary, First of the Council of State, And afterwards to the Two Protectors, Oliver and Richard Cromwell (from 1638 to the Restoration)* (7 volumes, London, 1742), 4, p. 686, letter from Major-General Whalley to Secretary Thurloe, 9 April 1656. For Whalley's paternalism, see Steve Hindle, *On the Parish? The Micro-politics of Poor Relief in Rural England c.1550-1750* (Oxford, 2004), p. 254.

³⁴⁸ Pole had been one of the signatories to the enclosure agreements in 1632 as had the fathers of Rayner and Newton. Pole had also been identified by Syddenham as a 'rioter' in 1642.

³⁴⁹ TNA: PRO: E134/1659/East27, depositions of Vicesimus Bradshaw of Makeney, Arthur Lowe of Hazelwood, Francis Hudson of Postern Lodge, and Thomas Thacker of Heage, 28 March 1659. Deponents disagreed over the amount of rent paid for the thirds: Bradshaw and Thacker said £2, Lowe and Hudson said £5.

³⁵⁰ We have already seen that two mid-century lists name some 177 people who had made encroachments in the Frith, most comprising a cottage and some land, anything up to thirty years previously. Not all of the encroachments, however, were hastily erected squatters' cottages: some belonged to Syddenham's legal tenants in the enclosures. (TNA: PRO: DL4/99/10, deposition of Robert Smith; TNA: PRO: E317/Derb/18, Commonwealth survey.) DL4/99/10 gives fifty-seven names and E317/Derb/18 gives 127; seven names are common to both lists.

court's decree confirming the agreement brokered by Whalley and that consequently they were free to pursue their former rights and claims.³⁵¹ As the commoners 'did violently appose [the] reincloseing of the said third part', Fleetwood and Cooke commenced two suits against them: one in the duchy court in 1657, following its reopening, and one in the Exchequer.³⁵² In February 1659 a commission was issued by the Exchequer to establish the legality of their possession of the thirds. Like Syddenham before them, they sought to prove that the commoners who had signed the original enclosure agreements in 1632 had been acting on behalf of all of the others; that the legal commoners had enjoyed the two-thirds allotted to them and had not challenged the enclosures in any court or in any legal way; and that those who had destroyed the fences were not legal commoners, who had accepted the enclosures, but 'inconsiderable persons of small or noe Visible Estates or Fortunes'.³⁵³ They even needed to ascertain the boundaries of their property as no hedges or fences remained standing.³⁵⁴ Seventy-seven named inhabitants were accused of 'confederating together' to defraud the plaintiffs of their thirds, cutting

³⁵¹ TNA: PRO: DL1/410, information by duke of Newcastle *et al.*, 8 May 1665.

³⁵² TNA: PRO: DL5/35, f. 336v, 17 June 1657. The court ordered that the plaintiffs should withdraw one of their two parallel suits in the duchy court and the Exchequer so that the 'Defendants may not bee doubly vexed'. In desperation, Fleetwood and Cooke had even persuaded Syddenham in 1657 to petition the duchy court to revive the injunction awarded to him against the commoners in 1642 for quieting his possession. (TNA: PRO: DL5/35, f. 363v, 14 May 1657.) The duchy court refused: the injunction had been issued over fifteen years previously and Syddenham had since passed his interest in the premises to Fleetwood and Cooke. (TNA: PRO: DL5/35, f. 366v, 17 June 1657.)

³⁵³ TNA: PRO: E134/1659/East27, interrogatories for the plaintiffs. As noted previously, the records of this commission comprise a substantial part of the surviving evidence for the unrest at Duffield. Fleetwood and Cooke asserted that one of the proofs that the commoners had accepted the enclosures was the fact that many of them had presumed that their tenure of the two-thirds (common socage) made them freeholders and entitled them to vote in parliamentary elections. (TNA: PRO: E134/1659/East27, interrogatory number 6 for the plaintiffs.) Both Vicesimus Bradshaw and Thomas Thacker deposed that several of the tenants who were actually copyholders had indeed voted in elections on the basis that the terms of the enclosure had rendered them eligible.

³⁵⁴ TNA: PRO: E134/1659/East27, interrogatory number 9 for the plaintiffs: '... What are the Metes and boundes of the sayd Inclosure called Bellpar Ward otherwise Bearepar Ward, What are the Metes and boundes of the sayd Inclosure called Chevyn Ward, What are the Metes and boundes of the sayd Inclosure called Holland Ward otherwise Hollin Ward.'

down wood, depasturing all manner of animals in them and defacing the boundaries.³⁵⁵

The defendants demonstrated that they were all legal commoners and therefore entitled to common in the whole of the Frith.³⁵⁶ They also claimed that those who had consented to the enclosures had only done so under duress and that that the two-thirds allotted to the commoners provided insufficient common.³⁵⁷ Echoes of scenes in the duchy court in 1642 are resounding, and scarcely surprising. Firstly, of the seventy-seven defendants, twenty-seven had been identified in 1642 as ‘rioters’ by Syddenham and a further twenty-eight were related to other named ‘rioters’ (see Appendix 9, ‘Duffield defendants in the 1659 Exchequer suit’).³⁵⁸ Similarly, nine of the fourteen ‘cheife leaders & Incendiaryes’ identified by Syddenham in 1647 were now defendants.³⁵⁹ Secondly, as the conversation between the commoners and the duchy or its lessees concerning the enclosures had been virtually continuous for over twenty-seven years, the commoners knew what to say and, more importantly, how to say it. Throughout their campaign of resistance they had consistently spoken the language of custom and legal entitlement: those accused

³⁵⁵ Details of Fleetwood and Cooke’s case against the commoners were rehearsed by the duke of Newcastle *et al.* in 1665. (TNA: PRO: DL1/410, information by duke of Newcastle.)

³⁵⁶ TNA: PRO: E134/1659/East27, interrogatories for the defendants. Although the defendants’ answer to Fleetwood and Cooke’s bill has not been found, the defendants’ purpose is clear from the eighty-seven interrogatories posed on their behalf. For example, interrogatory number 12: ‘Whether doe you knowe Two messuages & Farnes & one Cottage & Lands in Mircaston now in the possession of Gilbert Wallis What right of Comon doe you knowe the defendant Gilbert Wallis or any other owner or possessor of the said messuages & Farnes Cottages & Lands hath used or at any tyme heretofore have had & used or of right ought to have & use in a place called Holland ward to the said messuages Cottages & Lands respectively belonging’. Deponents then gave details of the landholding of individual defendants and confirmed that these holdings conferred common rights. For example, Gilbert Moseley deposed that he knew ‘one Messuage or Farne and one Cottage in Mercaston in the County of Derby in the possession of Gilbert Wallis which said Messuage farne or Cottage have all the time of this deponents remembrance had Comon for all their Cattle upon Holland Ward at all times of the yeare saveing at such time as part of the said Ward was inclosed’.

³⁵⁷ Details of the commoners’ defence were rehearsed by the duke of Newcastle *et al.* in 1665. (TNA: PRO: DL1/410.)

³⁵⁸ TNA: PRO: DL1/370, information presented by Beddingfield.

³⁵⁹ HLRO: HMLP: bundles dated 4 February and 20 March 1647, petition of Sir Edward Syddenham, 4 February 1647; petition of Sir Edward Syddenham, 20 March 1647. The five not named as defendants in 1659 were John Storer, Richard Haulkins, Thomas Boulton, John Bruckshaw and Richard Fletcher.

of destroying the fences admitted nothing except their rights within the enclosed areas.

In 1647 the commoners had used the prevailing political situation to their advantage but in 1659 they had no such opportunity. On 18 November, the court of the Exchequer decreed that the thirds should be freed from all claims of common and that Fleetwood and Cooke should be permitted quiet possession of them, without disturbance by the commoners.³⁶⁰ After eight years, the lessees had secured their legal possession. But it was to prove a hollow victory. The commoners had been given leave to appeal, and they did so.³⁶¹ Although the appeal was dismissed in July 1660, Fleetwood and Cooke had already thrown in the towel and sold their interest in the Frith to William Smith esquire (later Sir William) and John Hele, whose heir, Sir Thomas Hooke, succeeded him soon after.³⁶² What profits Fleetwood and Cooke had made from the enclosures in the form of rents from tenants had been swallowed up by costly lawsuits: an experience common to all outsiders who had endeavoured to cash in on the benefits of the Frith by riding roughshod over its jealously-guarded customs.

³⁶⁰ TNA: PRO: E126/7, f.128v-129v, Exchequer Decree and Order Book, 18 November 1659; TNA: PRO: DL1/410, information presented by duke of Newcastle.

³⁶¹ TNA: PRO: DL1/410, information presented by duke of Newcastle.

³⁶² The exact nature and timing of the transaction is unclear as the surviving records are not consistent and they are reports of the sale made by third parties rather than original sale documents. (BL: Add MS 6691, ff.49r-68r, transcript of an indenture between German Pole of Radbourn, esquire, and Gervase Rayner of Duffield, gentleman, and Sir John Curzon of Kedleston, knight, 2 September 1674; TNA: PRO: DL1/410, information presented by duke of Newcastle.) Both documents state that Hooke was the heir of John Hele, esquire, who had first purchased the thirds with Smith.

iv. Commoners meet their match

Smith and Hooke were more proactive than Fleetwood and Cooke in their ownership of the thirds, not least because Smith was a local justice.³⁶³ Unlike their predecessors, they immediately set about fencing and improving the enclosures; the commoners, however, reacted predictably. In November 1662, like Syddenham and Fleetwood and Cooke before them, Smith and Hooke had to resort to the duchy court to secure an injunction against commoners who had thrown down the recently-erected fences and entered the enclosures.³⁶⁴ Those identified as fence-breakers were Ralph Allen, John Aulton, Robert Barker, William Beardsley, Henry Bingham, Humphrey Collins, Francis Jackson, John Jepson, Richard Pickard, John Smith and Thomas Smith, together with several unnamed persons. Unsurprisingly, there was some continuity with events twenty years earlier: men with identical names to Allen, Aulton, Barker, Beardsley and Thomas Smith had been identified as 'rioters' in 1642.³⁶⁵ However, these were not necessarily the same people: the Robert Barker accused of rioting in 1662 was aged about twenty-four.³⁶⁶

The duchy court did not immediately issue an injunction against the commoners but granted them leave to appeal, which they did in June 1663.³⁶⁷ As so many times before, the commoners claimed that the majority of them were not parties to the original enclosure agreements of 1632, nor had they consented to the

³⁶³ Given his common surname, it has not been possible to ascertain the landholding of this William Smith in Derbyshire; however, it is known that he was a local justice of the peace. (TNA: PRO: E134/18Geo2/Mich1, deposition of Isaac Berkin of Belper Ward, 13 October 1742.)

³⁶⁴ TNA: PRO: DL5/36, ff. 198r-98v, 300v, Attorney General *versus* the duke of Newcastle *et al.*, 21 November 1662; TNA: PRO: DL4/108/36, examinations made concerning the same suit, Easter term 1664.

³⁶⁵ TNA: PRO: DL1/370, information presented by Beddingfield. Of the other five, only John Smith had the same surname as rioters in 1642 and, given how common that surname is, it would be impossible to confirm that he was related to any of the four earlier rioters named Smith.

³⁶⁶ TNA: PRO: DL4/108/36, examination of Robert Barker of Duffield, yeoman, 30 April 1664.

³⁶⁷ TNA: PRO: DL5/36, f. 230v, 10 February 1663; f. 237r, 17 February 1663; ff. 256v-57r, 4 June 1663.

original decree of 1633.³⁶⁸ But now, they had another line of defence. In August 1662 parliament had ratified the decree issued by the duchy court in July 1620 concerning a composition between the duchy and the tenants of Ireton Wood, all of whom intercommoned in Hulland ward.³⁶⁹ Under the terms of the original composition, this private act of parliament confirmed, amongst other things, that those tenants possessed common rights in the whole of Hulland ward. Aware of the act, in the duchy court the Duffield men disingenuously claimed that it related to all commoners within the ward and that therefore they could not be bound by the enclosure decree limiting commoners' access to two-thirds of the ward. The court was unconvinced and decreed that the enclosure agreements made in 1632 were binding on the signatories and all who claimed under them and that therefore Smith and Hooke should enjoy 'full, quiet and peaceable possession' of the enclosures.³⁷⁰

Unsurprisingly, the injunction issued to enforce this decree was breached by a number of commoners, from various parts of the manor, who pulled down fences and drove cattle, sheep and horses into the thirds. They subsequently defended their actions by claiming that they were entitled to pasture their animals anywhere in the Frith because they were not bound by the original enclosure agreements.³⁷¹ As in 1642, some commoners were openly contemptuous of the authority of the duchy

³⁶⁸ TNA: PRO: DL44/1117, enclosure agreements for Belper, Chevin and Hulland wards, returned to the Duchy court on 8 August 1632; TNA: PRO: DL5/31, ff. 446r-47v, enclosure decree for Belper, Chevin and Hulland wards, issued by the duchy court on 21 November 1633.

³⁶⁹ HLRO: PO/PB/1/1662/14C2n55 (1662), Private Act, 14 Charles II, c. 23, 'An Act for Confirmation of the Estates of several Tenants and Copyholders of the Manors of Rannes [*recte* Raunds], Irchesten [*recte* Irchester], ... and several other Manors, Parcels of the Duchy of Lancaster'. This act ratified compositions, originally made in 1618, 1619 and 1620, by tenants of various manors of the duchy of Lancaster, including Ireton Wood. The original decree issued by the duchy court that ratified the compositions is to be found in TNA: PRO: DL5/28, ff. 368v-380v, decree confirming an agreement between the king and customary tenants of the manors of Wirksworth *cum membris*, and Brassington, Bonsall and Ireton Wood *cum membris*, 5 July 1620.

³⁷⁰ TNA: PRO: DL5/36, ff. 256v-57v, 4 June 1663.

³⁷¹ TNA: PRO: DL4/108/36, interrogatories administered to, and examinations of, Robert Barker of Wildersley (aged 26), Humphrey Collins of Bargate (aged 56), Francis Jackson of Bowsmere (aged 34) and Thomas Smith of Shottle (aged 57), 30 April 1664. These men all came from different areas across the parish, demonstrating that once again physical opposition to the enclosures was widespread.

court itself.³⁷² Robert Barker bragged that he ‘cared noe more for the said Injuncion then [he] did for the stone that was under [his] foote’.³⁷³ Francis Jackson went even further, saying that he ‘vallued noe more the said Injuncion then [he] did a paper to wipe [his] Breech’.³⁷⁴ The activities of these particular men and their associates demonstrate that at Duffield, as elsewhere in forests and fens, post-Restoration attempts at enclosure, or re-enclosure, encountered riotous and litigious opposition.³⁷⁵ Wood has commented that in such areas ‘the experience of riot and collective litigation in defence of customary rights was ingrained within the local culture’.³⁷⁶ Fighting to defend customary rights was, however, tiring and although these Duffield commoners, some of whom belonged to the next generation, were keen to continue the fight, the old guard had become battle-weary.

In 1664, Robert Mellor, George Pole, German Pole and Gervase Rayner held meetings with the commoners of each ward and also paid visits to commoners’ homes to persuade them to authorise them to reach a settlement.³⁷⁷ Soon after, they commenced negotiations with Smith and Hooke ‘for settling and Composeing the matters in difference’ between them. A ‘Fynall end and conclusion’ was signed on 11 May 1664, whereby Smith and Hooke would hold four-fifths of each of the thirds and Mellor and the others, as trustees for the legal commoners, would hold the other fifth. Income from these fifths would be used to reimburse legal costs of about £700

³⁷² For contempts reported in 1642, see TNA: PRO: DL5/34, f. 191v, 1 July 1642.

³⁷³ TNA: PRO: DL4/108/36, interrogatory number 3.

³⁷⁴ TNA: PRO: DL4/108/36, interrogatory number 6.

³⁷⁵ For enclosure riots in the post-Restoration period, see, for example, Max Beloff, *Public Order and Popular Disturbances 1660-1714* (Oxford, 1938), pp. 76-81; Molly McClain, ‘The Wentwood Forest riot: property rights and political culture in Restoration England’, in S. D. Amussen and M.A. Kishlansky, *Political Culture and Cultural Politics in Early Modern England* (Manchester, 1995), pp. 112-32. In 1687, and again in 1725, the poor commoners of Wheatley (Oxfordshire) lodged complaints in the Exchequer against the enclosure of Shottover Forest. (W. O. Hassall (ed.), *Wheatley Records, 956-1956* (Oxfordshire Record Society, 37, Banbury, 1956), pp. 71-75, cited in Wood, *Riot, Rebellion and Popular Politics*, pp. 192-94.)

³⁷⁶ Wood, *Riot, Rebellion and Popular Politics*, p. 94.

³⁷⁷ TNA: PRO: DL4/110/1666/11, interrogatories and depositions in the suit between the duke of Newcastle *et al.* and Sir John Curzon *et al.*, returned into the duchy court on 24 November 1666.

that Mellor *et al.* had incurred since 1655.³⁷⁸ Soon afterwards the thirds were surveyed and re-enclosed, four-fifths for Smith and Hooke and one-fifth for the commoners; the other two-thirds of each ward were left open as before.³⁷⁹

Why had Mellor and his associates now agreed to the enclosures after thirty years of opposition? The commoners' bewilderment was expressed by William Hunt, who recalled that 'Mr Mellor before that time had stood very firme & faithfull to the comoners'.³⁸⁰ There are several possible explanations for the capitulation. Firstly, time, effort and expenditure had taken their toll. The four men had spent large sums on legal proceedings in defence of the Duffield commoners' rights but few others had contributed to these costs.³⁸¹ Secondly, Smith and Hooke were more formidable opponents than their predecessors. They had erected fences immediately after acquiring the thirds and had reacted quickly to their subsequent destruction.³⁸² They were also capable of driving a hard bargain. It was later alleged that Mellor and the others had wanted to recover up to two-thirds of the enclosed thirds, whereas eventually they had gained only a fifth.³⁸³ Thirdly, during the previous thirty years 'many Cottages & incroachments [had been] built and taken in by poore persons that

³⁷⁸ TNA: PRO: DL1/410, information by duke of Newcastle *et al.*, 8 May 1665; BL: Add MS 6691, ff. 49r-68r, transcript of an indenture between German Pole & Gervase Rayner and Sir John Curzon, 1 September 1674. The agreement was eventually enrolled in Chancery on 25 June 1666 and confirmed by an act of parliament in 1670. (HLRO: PO/PB/1/1670/22&23C2n18 (1670), Private Act, 22 & 23 Charles II, c.10, 'An Act for settling an Agreement between Sir William Smith and Sir Thomas Hooke Baronet, German Poole, and others'. BL: Add MS 6691, ff. 87r-98r is a transcript of this act.)

³⁷⁹ The land granted out of the king's thirds to the commoners comprised 275 acres in total: 95 acres in Hulland Ward (in two parcels, one of 35 acres and the other of 60 acres), 120 acres in Belper Ward (in two parcels) and 60 acres in Chevin Ward. (BL: Add MS 6691, f. 53r.)

³⁸⁰ TNA: PRO: DL4/110/1666/11, deposition of William Hunt of Clouds, in the parish of Mugginton, aged 70, 1 October 1666.

³⁸¹ The enclosure decree had stated that commoners should contribute to the legal costs of the enclosure in proportion to their landholding. (TNA: PRO: DL5/31, f. 447r.) Few had complied. In 1639 William Dickens had tried to recoup from other commoners money that he had laid out in legal costs but with no success. (TNA: PRO: DL5/33, f. 227v, 3 July 1639.) The matter was revived unsuccessfully by his son in 1665. Interestingly, Mellor, the two Poles and Rayner were defendants in these actions. (TNA: PRO: DL5/37, f. 88v, 18 February 1665.)

³⁸² TNA: PRO: DL5/36, ff. 198r-98v, 21 November 1662.

³⁸³ TNA: PRO: DL4/110/1666/11, depositions of Ralph Rossington ('a third or a fourth part'), Thomas Bromley ('a third part'), William Hunt ('a third part', 'two third parts'), 24 November 1666.

have noe right of Common' in the Frith.³⁸⁴ These squatters were draining the Frith's resources to the detriment of the legal commoners and needed regulating. Until now the commoners' energies had been directed against the evils of enclosure rather than the consequences of unregulated commons. It was later alleged that the agreement with Smith and Hooke had even authorised the enclosure of the two-thirds so that the land could be allotted proportionately amongst the legal commoners.³⁸⁵ Many proposed enclosures did allot manorial tenants a proportion of the former commons and thereby divided their interests from those of their poorer neighbours but such an offer could not have been made by Smith and Hooke because they had no authority over the management of the two-thirds.³⁸⁶

However they might justify their actions, after more than thirty years of protest, Mellor and his associates were somewhat optimistic in hoping that they could settle the matter unopposed. Objections were raised by several groups: tenants within 'the king's thirds' whose lands were being allocated to the commoners; commoners who had expected a better settlement; commoners who had not agreed that Mellor and his associates should negotiate a settlement at all.³⁸⁷ Inconclusive arguments between supporters of the settlement, led by Newcastle, and its opponents, led by Sir John Curzon, continued for several years.³⁸⁸ Eventually, in 1672, both

³⁸⁴ TNA: PRO: DL4/110/1666/11, interrogatory number 11 for the complainants.

³⁸⁵ TNA: PRO: DL1/411, (unnumbered), answer of Sir John Curzon *et al. versus* William, duke of Newcastle *et al.*, 21 November 1665. Such a proposal originally was suggested in the decree that established the enclosures but was never enforced. (TNA: PRO: DL5/31, f. 447v.)

³⁸⁶ For enclosure proposals that divided rather than united commoners, see, for example, Sharp, *In Contempt of All Authority*, *passim*.

³⁸⁷ The objections and the actions in the Duchy Court that arose as a result of them and continued from 1665 to 1672 can be traced in the Duchy's Decree and Order Book. (TNA: PRO: DL5/37, ff. 153r, 158r, 162v, 168v, 257v, 259v, 361v; TNA: PRO: DL5/38, ff. 67r, 224v, 238r, 460v.) Some deponents alleged that they had been either coerced or bribed by Mellor *et al.* to agree to the negotiations; others alleged that Mellor *et al.* had attempted to purchase their interest in the Frith. (TNA: PRO: DL4/110/1666/11, interrogatories and depositions in the suit between the duke of Newcastle *et al.* and Sir John Curzon *et al.*, returned into the duchy court on 24 November 1666.)

³⁸⁸ In addition to the entries in the Duchy Decree and Order Book, see also TNA: PRO: DL1/410, information of duke of Newcastle *et al.*; TNA: PRO: DL1/411, answer of Sir John Curzon *et al.*; TNA: PRO: DL4/110/1666/11, interrogatories and depositions. Some of the claims made by either

sides agreed mutually to end the proceedings.³⁸⁹ In 1674 the fifths were sold to Curzon with the proviso that the land should lie open and in common, except for three plots, totalling 110 acres, that had already been leased to local men.³⁹⁰

The Duffield commoners had given up the fight. They had failed to remove permanently the original enclosures either by physical force or legal argument. Although the fences had been destroyed in the 1640s and the Frith had lain open for almost twenty years, the enclosures were reinstated in the 1660s. The agreement with Smith and Hooke, and the resultant survey, had redefined the boundaries and new fencing had been erected. From 1664 onwards, therefore, despite their protracted fight, the Duffield commoners held just 275 acres more than the 3,065 acres that they had been allocated following Jordan's survey and the division of the Frith in 1633.³⁹¹

v. Success or failure?

The main, although not necessarily the only, goal of enclosure rioters was the permanent removal of divisions that restricted access to land formerly used in common. Judged against this standard, the Duffield rioters had failed. Confirmation is provided by descriptions of the physical state of the Frith in the 1660s given by

side appear to be based on misunderstandings and misinterpretation. Not even these documents shed any light on Newcastle's interest in the matter: although the holdings in the manor of some of his illustrious co-complainants are described by various deponents, *his* are neither questioned nor defined.

³⁸⁹ TNA: PRO: DL5/38, f. 460v, 13 June 1672.

³⁹⁰ BL: Add MS 6691, ff. 64r-65r. The sale was authorised by German Pole and Gervase Rayner, the two surviving trustees. The purchase price was £650. William Wollatt of Heage had leased 40 acres in the fifth of Belper Ward; William Johnson of Hazelwood 30 acres in the fifth of Chevin Ward; and Roger Glew, William Taylor, Daniel Steer and William Robinson, all of Belper, another 40 acres in the fifth of Belper Ward. Presumably, as had been agreed in 1664, Mellor, the two Poles and Rayner had made the original leases to reimburse the legal costs that they had incurred. (TNA: PRO: DL1/410, information of duke of Newcastle *et al.*)

³⁹¹ TNA: PRO: DL44/1127, document 2, report of William Jordan's survey of Duffield Frith, 30 September 1633. (See above, Chapter 4, part 1, section iv, 'The improvement of the Frith'.)

Exchequer deponents in 1742.³⁹² The enclosures were still in place in 1742 and many elderly inhabitants remembered at first or second hand the ‘inclosure of the kings Share’ of the wards some eighty years previously.³⁹³ Initially their memories appear faulty since the original enclosures had been made well over a century earlier; closer inspection, however, reveals that they were recalling the erection of fences by Smith and Hooke in the 1660s. For example, Isaac Berkin recalled that his late father and grandfather

often Declared they remembered the first Inclosing the Kings part of [Belper] ward that it gave great Uneasiness to the Commoners. That Sir Hales Hook & Mr Smith who was an Active Man & a Justice in the Neighbourhood having a Grant of the Kings part they inclosed it in spite of Opposition.³⁹⁴

Berkin’s use of the term ‘uneasiness’ to describe the effect of the enclosures on the commoners is interesting, not least because several of its various definitions could fit his usage.³⁹⁵ The enclosures certainly possessed ‘the quality of being troublesome’ to the commoners; they also caused them ‘difficulty’ and ‘anxiety’; and brought individual inhabitants ‘discomfort, trouble, or anxiety as affecting their circumstances’. The commoners themselves displayed great ‘unwillingness’ and ‘reluctance’ to accept the enclosures. More unusually, ‘uneasiness’ might mean ‘unpleasantness, ill feeling’, which aptly summarises the uncomfortable atmosphere within the community. Whatever Berkin meant to convey, the nuanced meanings

³⁹² The depositions were made during an Exchequer suit concerning claims over unpaid tithes within the parish. (TNA: PRO: E134/18Geo2/Mich1, depositions for the plaintiffs and for the defendants, 13 October 1742; BL: Add MS 6691, ff. 32r-40v, is a transcript of these depositions.)

³⁹³ TNA: PRO: E134/18Geo2/Mich1, depositions of Peter Alsop of Hazelwood, aged about 80; Jane Booth of Windley, aged 93; John Spencer of Belper, aged 88 (13 October 1742).

³⁹⁴ TNA: PRO: E134/18Geo2/Mich1, deposition of Isaac Berkin of Belper Ward, aged 60, 13 October 1742. His grandfather had died forty years previously, aged 70, and his father two years previously, aged 88. The words in struck through ~~thus~~ have been deleted in the original. By ‘Sir Hales Hook’, Berkin means Sir Thomas Hooke, heir of John Hele.

³⁹⁵ The various definitions of ‘uneasiness’ include ‘the quality of being troublesome’ (1712); ‘difficulty; difficult nature or character’ (1594); ‘unwillingness, reluctance’ (1594); ‘unpleasantness; ill feeling’ (1734); ‘discomfort, trouble or anxiety, as affecting one’s circumstances or welfare’ (1599); physical discomfort (falling short of actual or definite pain) (1665); ‘mental discomfort; anxiety, apprehension’ (1682). (*OED*.) (The dates are those of first known usage.)

define different qualities of discontent, all of which were experienced by Duffield commoners during their fight against the enclosures.

Although Berkin and his fellow inhabitants had heard tell of the unenclosed Frith before Smith had erected the fences in the 1660s, not one of the twenty or more deponents had apparently ever heard mention of the fences that had been erected in the 1630s, or of the riots that had destroyed them during the 1640s.³⁹⁶ That there does not appear to have been a collective memory within the community of such momentous events is especially surprising since

community defiance does tend to be remembered by peasantries ... with more insistence than many other forms of historical event; it is socially relevant, and will be talked about, when other less resonant and less unifying (often more external) past events will remain undiscussed and will thus be forgotten.³⁹⁷

It appears that over the intervening years, for whatever reason, Duffield commoners had not handed down tales of the resonant, and clamorous, actions of their predecessors that had, indeed, unified the community. The only memory from those more distant times was the designation 'the king's part', or 'king's share', which was given to the enclosures within each ward.³⁹⁸

Having purchased Hooke's interest, Smith divided 'the king's shares' into farms, which he leased to local people.³⁹⁹ The commoners' fifths of the original

³⁹⁶ It is possible that the deponents had heard of the original enclosures but simply failed to mention them in their depositions. If this were the case, it does seem somewhat strange – why mention the later enclosures but not the earlier, especially as the enclosures were referred to as 'the king's part'?

³⁹⁷ James Fentress and Chris Wickham, *Social Memory* (Oxford, 1992), p. 114.

³⁹⁸ TNA: PRO: E134/18Geo2/Mich1, depositions of Thomas Garrett of Hulland ward (age not given); Peter Alsop of Hazelwood, aged about 80; Isaac Berkin of Belper ward, aged 60; Jane Booth of Windley, aged 93; John Holbrook of Hulland ward, aged 56; Edward Allen of Hulland ward, aged 50; John Beeston of Hulland ward, aged 88. None of these deponents explained what they meant by 'the king's share'. Although they knew which areas of the Frith were so designated, they may not have known the reason.

³⁹⁹ TNA: PRO: E134/18Geo2/Mich1. Isaac Berkin stated that after the enclosure of the king's share, 'Smith Rented Sir Hales share & so entitled to the whole & leased it to Tenants'. Peter Alsop's father had rented thirteen acres in the 'Kings part' of Chevin ward 'at 6s 8d an Acre & Improved it'. In 1742, Alsop himself was renting this land, having received it his father via his mother.

enclosures were also partly enclosed.⁴⁰⁰ Viewed from this narrow angle, the commoners' strenuous opposition had achieved very little: not only was most of each third still enclosed but also their heroic efforts were long-forgotten. Viewed from a wider perspective, however, they had actually achieved a great deal. In 1742, the Exchequer deponents stated that the remainder of each ward was still 'Uninclosed & Depastured by great Flocks of Sheep & Cattle by those having right of Common' and that cottagers had been permitted to make encroachments.⁴⁰¹ One hundred years after the first riots, therefore, inhabitants still had access to over 3,300 acres of common in Duffield Frith.⁴⁰²

Viewed from a national vantage-point, moreover, the commoners' achievement was even greater. During the 1650s many former crown lands had been sold but, as we have seen, although Duffield Frith in its entirety had been earmarked for sale, no such sale had occurred. The commoners had put their case so convincingly that, having heard their arguments and seen that 'the [Frith] is layd open & in Common againe', the commissioners scrapped plans to sell that particular crown property.⁴⁰³ Furthermore, because the original enclosure that was 'agreed' in 1632 had been preceded by disafforestation, the Frith was no longer technically a forest and so fell outside the scope of the act passed in 1653 for raising revenue by selling forests.⁴⁰⁴ Somewhat ironically, it was the terms of the enclosure itself that

⁴⁰⁰ Although technically the commoners held one-fifth of each third in common, as we have already seen, 110 of those 275 acres had been leased to several local men.

⁴⁰¹ TNA: PRO: E134/18Geo2/Mich1, depositions of Peter Alsop of Chevin ward; John Holbrook of Hulland ward; Laurence Peach of Hulland ward.

⁴⁰² The commoners' original allocation comprised 1,122 acres in Belper Ward, 1,129 in Hulland Ward and 814 acres in Chevin Ward, making a total of 3,065 acres. (TNA: PRO: DL44/1127, report of the Duffield enclosure commissioners, September 1633.)

⁴⁰³ TNA: PRO: E317/Derb/18, Commonwealth survey.

⁴⁰⁴ In order to preserve their timber, forests had been specifically excluded from the 1649 Act for the Sale of Crown Property. Soon after, however, parliament's need to raise more money to cover army back-pay overrode this exclusion. In 1653 it passed 'An Act for the Deafforestation, Sale and Improvement of the Forests'. (For the text of the act, see Firth and Rait (eds), *Acts and Ordinances*, 2, pp. 783-812.) The act was amended in August 1654. (*ibid.*, pp. 946-49.) Plans to sell the forests were fraught with problems. Aware of the disputes that had arisen when the crown had attempted

prevented this second possible sale of the Frith by parliament.⁴⁰⁵ Thanks, therefore, both to the legal efforts of the commoners who signed the enclosure agreements and to the illegal efforts of the commoners who rioted, their heirs and successors were able to enjoy the benefits of more than 3,300 acres of common in the Frith until the three wards were finally enclosed by private acts of parliament in the late eighteenth century.⁴⁰⁶

disafforestation and enclosure, parliament trod more carefully and, consequently, the matter became bogged down in surveys, investigating documents and arguing with forest inhabitants. Within each sale, allowances had to be made for recompensing legal commoners and providing for the poor who were dependent on forest commons. Certain forests were excluded from the act. In the end, very few areas of forest were sold at that time. For succinct summaries of the policy, see Joan Thirsk, 'Agrarian problems and the English Revolution', in R. C. Richardson (ed.), *Town and Countryside in the English Revolution* (Manchester, 1992), pp. 169-97, especially pp. 176-80; Thirsk, 'Agricultural policy', pp. 314-17. (In the latter, Thirsk erroneously states that Duffield Frith was one of the few forests that were sold under the act. (p. 317).) See also, for example, James, *Social Problems*, pp. 121-22; Madge, *Domesday of Crown Lands*; Pettit, *Royal Forests of Northamptonshire*, pp. 70-71. For the attempted sale of particular forests and chases and the resistance put up by inhabitants, see, for example, David Pam, *The Story of Enfield Chase* (Enfield, 1984), pp. 63-77; Thirsk, 'Agrarian problems', pp. 178-80.

⁴⁰⁵ When, in the 1780s, parliament sought to maximise the land revenues of the crown by selling forests, Duffield Frith was specifically omitted from the resultant surveys of crown lands because it had already been disafforested. For a description of these surveys, see David Fletcher, 'Parliamentary Surveys', in John Langton and Graham Jones (eds), *Forests and Chases of England and Wales c.1500-c.1850: Towards a survey & analysis* (Oxford, 2005), pp. 17-20. In 1781, John St John, the surveyor-general, identified not only existing forests and chases but also 'nominal forests and chases, some of which have been inclosed, and are demised as part of the land revenue, and in others the rights of the crown have been totally granted away'. He listed 'Duffield forest' as one of the latter. (St John, *Observations on the Land Revenue*, pp. 120-23.)

⁴⁰⁶ HLRO: PO/PB/1/1771/11G3n101 (1771), Private Act, 11 George III, c. 54, 'An Act for dividing and inclosing a certain Common, called Holland Ward otherwise Hollin Ward, in the County of Derby'; HLRO: PO/PB/1/1786/26G3n170 (1786), Private Act, 26 George III, c. 57, 'An Act for dividing and inclosing certain Commons, called Belper Ward and Chevin Ward, in the County of Derby, and certain Waste Lands within the Liberties of Duffield, in the said County of Derby'.